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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 216.

THE COUNTY OF RAY, PLAINTIFF IN ERROR,

vs.

HORATIO D. VANSYCLE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED [redacted], 1875.

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SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of Missouri, greeting:

[SEAL.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the April term, 1875, thereof, between Horatio D. Vansycle, plaintiff, and the County of Ray, in the State of Missouri, a manifest error hath happened, to the great damage of the said county of Ray, as by its complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this first day of May, in the year of our Lord one thousand eight hundred and seventy-five.

Issued at office in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, dated as aforesaid.

H. C. GEISBERG,
Clerk C. C. U. S. Western Dist. Mo.

Allowed by—

A. KREKEL, *Judge.*

2 UNITED STATES OF AMERICA,
Western District of Missouri, sct:

I' obedience to the command of the within writ of error, I herewith transmit to the Supreme Court of the United States a transcript of the record and proceedings in the within-mentioned case, together with all things concerning the same.

In witness whereof I hereunto subscribe my name this 30th day of July, A. D. 1875.

H. C. GEISBERG,
Clerk U. S. Circuit Court Western Dist. of Mo.

(Indorsed:) 245. United States circuit court western district of Missouri. Horatio Vansycle, D. E., vs. Ray County, in the State of Mo., P. E. Writ of error to the circuit court of the United States for the western district of Missouri. Returned and filed 187 . , clerk.

3 The United States of America to Horatio D. Vansycle, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Missouri, wherein the County of Ray, in the State of Mis-

souri, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Arnold Krekel, judge of the circuit court of the United States for the western district of Missouri, this first day of May, in the year of our Lord one thousand eight hundred and seventy-five.

A. KREKEL,
Judge United States Circuit Court Western District of Missouri.

4 UNITED STATES OF AMERICA,
Western District of Missouri, ss:

We hereby acknowledge service of the within citation this 7th day of June, A. D. 1875.

PHILIPS & VEST,
Att'ys for Pl'ff.

(Indorsed:) 245. United States circuit court western district of Missouri. Horatio D. Vansycle, D. .... vs. County of Ray, in the State of Mo., P. E. Citation. Filed 1 87 . , clerk.

5 UNITED STATES OF AMERICA,
Western District of Missouri, set:

Pleas before the honorable circuit court of the United States in and for the western district of Missouri, at the April term thereof, A. D. 1875, in case of—

HORATIO D. VANSYCKEL
vs.
RAY COUNTY, IN THE STATE OF MISSOURI. } No. 245.

Be it remembered that heretofore, to wit, on the 17th day of March, A. D. 1874, there was filed in the clerk's office of the circuit court of the United States in and for the western district of Missouri a petition in the above-entitled case, in the words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA,
Western District of Missouri:

In the circuit court of the United States for the western district of Missouri. April term, 1874.

HORATIO D. VANSYCKEL, PLAINTIFF,
vs.
RAY COUNTY, IN THE STATE OF MISSOURI, defendant.

6 1. The plaintiff, Horatio D. Vansyckel, who is a citizen of the State of New York, states that the defendant, Ray County, a municipal corporation created by and existing under the laws of the State of Missouri, and a citizen of the State of Missouri, heretofore, on or about the second day of November, A. D. 1868, by its certain

writing obligatory called bond, numbered 51, signed by C. W. Narramore, the presiding justice of the then county court of said county of Ray, attested by George N. McGee, then the clerk of said county court, sealed with the seal of said county court and bearing date the day and year last aforesaid, and herewith filed, acknowledged itself to be indebted and bound to the S't Louis and S't Joseph Railroad Company, or bearer, in the sum of one thousand dollars, which sum the said county promised to pay to the said S't Louis and S't Joseph Railroad Company, or bearer, at the American Exchange National Bank, in the city of New York, in the State of New York, on the first day of January, A. D. 1879, together with interest thereon from the first day of January, A. D. 1869, at the rate of eight per cent. per annum, which interest shall be payable annually on the presentation and delivery at the said bank of the coupons of interest attached to said bond; said bonds being issued under the constitution and laws of Missouri and to construct the S't Louis and S't Joseph Railroad. Plaintiff states that he is the bearer and holder of said bond, and also of the coupon for the annual install-
7 ment of interest, amounting to eighty dollars, due on the first day of January, A. D. 1874, which coupon was annexed to said last-named bond as aforesaid, and is now herewith filed; that although when said installment of interest became due, viz, on said first day of January, A. D. 1874, said last-named coupon was duly presented for payment at the said American Exchange National Bank, in the city of New York, and payment thereof was requested, yet the same was not nor has since been paid, but remains now due and wholly unpaid. Plaintiff states that upon payment of said coupon being refused, as hereinbefore set forth, the same was duly protested for non-payment, and plaintiff, having paid a valuable consideration for said bond and coupon, asks judgment for the sum of eighty dollars, with interest thereon from January the first, A. D. 1874, and four per cent. damages on said sum of eighty dollars, and his costs herein.

2. And plaintiff, for another and further cause of action, states that heretofore, on or about the second day of November, A. D. 1868, the said defendant, by its certain other writing obligatory, called bond numbered 80, signed by C. W. Narramore, the presiding justice of the then county court of said county of Ray, attested by the then clerk of said county court, sealed with the seal of said county court and bearing date the day and year last aforesaid, and herewith filed, acknowledged itself to be indebted and bound to the S't Louis and S't Joseph
8 Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said S't Louis and S't Joseph Railroad Company, or bearer, at the American Exchange National Bank, in the city of New York, in the State of New York, on the first day of January, A. D. 1879, together with interest thereon from the first day of January, A. D. 1869, at the rate of eight per cent. per annum, to be paid annually on the presentation and delivery at the said bank of the coupons of interest attached to said bond, said bond being issued under the constitution and laws of Missouri and to construct the S't Louis and S't Joseph Railroad. Plaintiff says that he is the bearer and holder of said bond, and also of the coupon for the annual installment of interest of eighty dollars, due on the first day of January, A. D. 1874, on said bond, which coupon was attached to said bond, and is also herewith filed; and plaintiff says that when said installment of interest became due, viz, on January the first, 1874, said last-named coupon was duly presented for payment at the said American Exchange National Bank, in the city of New York, and payment thereof was requested, but

the same was not paid, and is now wholly unpaid. Plaintiff states that upon payment of said coupon being refused the same was duly protested for non-payment, and that he is the purchaser and holder of said bond and coupon for a valuable consideration. Wherefore he asks judgment for the sum of eighty dollars, with interest from January
9 the first, A. D. 1874, and for four per cent. damages on said sum of eighty dollars, and for his costs.

3. And plaintiff, for another and further cause of action, states that heretofore, on or about the second day of November, A. D. 1868, the said defendant, by its certain other writing obligatory, called bond numbered 90, signed by C. W. Narramore, the presiding justice of the then county court of said county of Ray, attested by George N. McGee, the then clerk of said county court, sealed with the seal of said county court and bearing date the day and year last aforesaid, and herewith filed, acknowledged itself indebted and firmly bound to the S't Louis and S't Joseph Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said S't Louis and S't Joseph Railroad Company, or bearer, at the American Exchange National Bank, in the city of New York, in the State of New York, on the first day of January, A. D. 1879, together with interest thereon from the first day of January, A. D. 1869, at the rate of eight per cent. per annum, said interest payable annually on the presentation and delivery at the said bank of the coupons of interest hereto attached, said bond being issued under the constitution and laws of Missouri and to construct the S't Louis and S't Joseph Railroad. Plaintiff states that he is the bearer and holder of said bond and coupon, having purchased the same for a valuable consideration, said coupon being for the installment of interest amounting to eighty dollars, due on the
10 first day of January, A. D. 1874, which coupon was attached to said bond and is now herewith filed; and he says that when said installment of interest became due, viz, on January the first, A. D. 1874, said last-named coupon was duly presented for payment at said American Exchange National Bank, in the city of New York, and payment thereof was requested, which was refused, and said coupon is yet wholly unpaid. Plaintiff states that upon payment of said coupon being refused the same was duly protested for non-payment, and that he purchased said coupon for a valuable consideration. Wherefore he prays judgment for the sum of eighty dollars, with interest from January the first, A. D. 1874, and four per cent. damages on said sum of eighty dollars, and costs of suit.

4. And plaintiff, for another and further cause of action, states that heretofore, to wit, on or about the second day of November, A. D. 1868, the said defendant, by its certain other writing obligatory, called bond numbered 91, signed by C. W. Narramore, the presiding justice of the county court of said county of Ray, attested by the then clerk of said county court, sealed with the seal of said county court and bearing date the day and year last aforesaid, and herewith filed, acknowledged itself to be indebted and bound to the S't Louis and S't Joseph Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said S't Louis and S't Joseph Railroad Company,
11 or bearer, at the American Exchange National Bank, in the city of New York and State of New York, on the first day of January, A. D. 1879, together with interest thereon from the first day of January, A. D. 1869, at the rate of eight per cent. per annum, said interest to be payable annually on the presentation and delivery at the said bank of the coupons of interest attached to said bond, said

bond being issued under the constitution and laws of Missouri and to construct the S't Louis and S't Joseph Railroad. Plaintiff says that he is the bearer and holder of said bond, and of the coupons for interest thereon, amounting to eighty dollars, due January the first, A. D. 1874, and which was attached to said bond and is herewith filed, having purchased said bond and coupon for a valuable consideration; that when said coupon became due, viz, on January the first, 1874, the same was duly presented for payment at said American Exchange National Bank, in the city of New York, and payment thereof requested, and payment refused, whereupon said coupon was duly protested for non-payment, and the same is yet wholly unpaid. Plaintiff asks judgment for said sum of eighty dollars, and interest thereon from January the first, A. D. 1874, and for four per cent. damages on said sum of eighty dollars and costs.

5. Plaintiff, for another and further cause of action, says that heretofore, on or about November the second, A. D. 1868, the said defend-
12 ant, by its certain other writing obligatory, called bond numbered 92, signed by C. W. Narramore, the presiding justice of the *the* county court of said county of Ray, attested by the then clerk of said county court, sealed with the seal of said county court and bearing date the day and year last aforesaid, and herewith filed, acknowledged itself indebted and firmly bound to the S't Louis and S't Joseph Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said S't Louis and S't Joseph Railroad Company, or bearer, at the American Exchange National Bank, in the city of New York and State of New York, on the first day of January, A. D. 1879, together with interest thereon from the first day of January, A. D. 1860, at the rate of eight per cent. per annum, payable annually on the presentation and delivery at the said bank of the coupons of interest attached to said bond, said bond being issued under the constitution and laws of Missouri and to construct the S't Louis and S't Joseph Railroad. Plaintiff says that he is the holder and bearer of said bond, and also of the coupon for the interest thereon, due January the first, A. D. 1874, for eighty dollars, and which coupon was attached to said bond and is herewith also filed, plaintiff having purchased said bond and coupon for a valuable consideration; and plaintiff says that when said coupon became due, viz, on January the first, A. D. 1874, the same
13 was duly presented at said American Exchange National Bank, in the city of New York, and payment thereof requested, which was refused, whereupon said coupon was duly protested for non-payment, and the same is now wholly unpaid. Wherefore plaintiff asks judgment for eighty dollars, with interest thereon from January the first, A. D. 1874, and for four per cent. damages on said sum of eighty dollars, and for costs.

Plaintiff, for another and further cause of action, says that heretofore, on or about November the second, A. D. 1868, the said defendant, by its certain other writing-obligatory, called bond numbered 93, signed by C. W. Narramore, the presiding justice of the then county court of Ray County aforesaid, attested by the then clerk of said county court, sealed with the seal of said county court, and bearing date the day and year last aforesaid, and herewith filed, acknowledged itself to be indebted and firmly bound to the S't Louis and S't Joseph Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the S't Louis and S't Joseph Railroad Company, or bearer, at the American Exchange National Bank, in the city of New York, and State of New York, on the first day of January, A. D. 1879,

together with interest thereon from the first day of January, A. D. 1869, at the rate of eight per cent. per annum, payable annually on the presentation and delivery at the said bank of the coupons of interest attached to said bond, said bond being issued under the constitu-
14 tion and laws of Missouri, and to construct the S't Louis and S't Joseph Railroad. Plaintiff says that he is the bearer and holder of said bond, and also of the coupon for the interest due thereon on January the first, 1874, amounting to eighty dollars, which coupon was attached to said bond, and is now herewith filed; and plaintiff says that when said coupon became due, viz, on January the first, A. D. 1874, the same was presented for payment at said American Exchange National Bank, in the city of New York, and payment refused, whereupon said coupon was duly protested for non-payment, and is yet wholly unpaid. Wherefore plaintiff asks judgment for said sum of eighty dollars, with interest from January the first, 1874, and for four per cent. damages on said sum of eighty dollars, and for costs.

7. Plaintiff, for another and further cause of action, says that heretofore, on or about the second day of November, A. D. 1868, the said defendant, by its certain other writing-obligatory, called bond numbered 94, signed by C. W. Narramore, the presiding justice of the then county court of said Ray County, attested by the then clerk of said county court, sealed with the seal of said county court, and bearing date the day and year last aforesaid, and herewith filed, acknowledged itself indebted and firmly bound to the S't Louis and S't Joseph Railroad Company in the sum of one thousand dollars, which sum the said county of Ray promised to pay to the said S't Louis and S't Joseph Railroad
15 Company, or bearer, at the American Exchange National Bank, in the city of New York, and State of New York, on the first day of January, A. D. 1879, together with interest thereon from the first day of January, A. D. 1869, at the rate of eight per cent. per annum, payable annually, on the presentation and delivery at said bank of the coupons of interest attached to said bond, said bond being issued under the constitution and laws of Missouri, and to construct the S't Louis and S't Joseph Railroad. Plaintiff says that he is the bearer and holder of said bond, and also of the coupon of interest thereon for eighty dollars, due January the first, A. D. 1874, which coupon is herewith filed; and plaintiff says that on the day when said coupon became due, viz, on January the first, A. D. 1874, the same was presented for payment at said American Exchange National Bank, in the city of New York, and payment thereof was refused, whereupon said coupon was protested for non-payment, and the same is now wholly unpaid. Wherefore plaintiff asks judgment for said sum of eighty dollars, with interest from January the first, A. D. 1874, and for four per cent. damages, and costs of suit.

PHILIPS & VEST,
For Pl'ff.

And thereupon, on the said 17th day of March, A. D. 1874, a summons was issued out of the clerk's office of said court in words and figures following, to wit:

Summons.

WESTERN DISTRICT OF MISSOURI, *set:*

16 The President of the United States of America to the marshal of the western district of Missouri, greeting:

You are hereby commanded to summon Ray County, in the State of

Missouri, a citizen of said district, that he be and appear before the honorable circuit court of the United States for the western district of Missouri, on the first day of the next term thereof, to be holden at the city of Jefferson, in and for said district, on the 20th of April next, then and there to answer the complaint of Horatio D. Vansyckel, a citizen of the State of New York, as set forth in the petition filed in said court on the 17th day of March, A. D. eighteen hundred and seventy-four. Hereof fail not, and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, the 17th day of March, A. D. eighteen hundred and seventy-four. Issued at office, in the city of Jefferson, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By C. M. WARD, *D. C.*

Upon the foregoing summons the marshal of the United States in and for the western district made the following return, to wit:

Marshal's return.

I hereby certify that I executed the within writ by delivering a true copy of same and a true copy of the declaration or bill of com-
17 plaint filed in the within-entitled cause to George N. McGee, clerk of the county court of the within named the county of Ray, on the 23d day of March, A. D. 1874, in Ray County, in the western district of Missouri.

GEORGE SMITH,
U. S. Marshal,
By WM M. SMITH,
Deputy.

And afterwards, at a regular stated term of said circuit court of the United States in and for the western district of Missouri, begun and held at the city of Jefferson, in said district, on the third Monday of April, A. D. 1874, the following proceedings were had in this case on the 20th day of April in said year, to wit:

Order granting leave to plead.

HORATIO D. VANSYCKEL
vs.
RAY COUNTY. } No. 245.

Now comes the said parties, by their respective attorneys, and by consent leave is granted to defendant to file answer on or before August 1st, 1874, and copy to be served on plaintiff's attorneys by mail, and cause continued until next term of this court.

And afterwards, to wit, on the 25th day of June, A. D. 1874, it being in vacation of said court, there was filed in this case an answer in words and figures following, to wit:

Answer.

Circuit court of the United States for the eighth circuit and western district of Missouri, November term, 1874.

HORATIO D. VANSYCKEL, PLAINTIFF,
against
RAY COUNTY, DEFENDANT.

In answer to each and all of the causes of action in plaintiff's petition defendant denies that it ever made, issued, and delivered by its writing-obligatory certain bonds and coupons as is described and alleged in said petition, whereby it acknowledged itself to be indebted and bound to the S't Louis and S't Joseph Railroad Company, or bearer, in the sum of one thousand dollars each, or any other sum which the said county of Ray promised to pay to the S't Louis and S't Joseph Railroad Company, or bearer, at the American Exchange National Bank, in the city of New York, on the first day of January, A. D. 1879, at the rate of eight per cent. per annum.

Denies that by said alleged coupons the defendant promised to pay to the bearer on the first day of January, A. D. 1874, at the said Exchange National Bank, in the city of New York, the sum of eighty dollars each, or any other sum, as interest due on the date last aforesaid, on certain bonds issued by the defendant, or any bonds mentioned in said alleged coupons.

Whether or not the plaintiff is now, or was at the time of filing his petition, or at any other time, the owner or holder or bearer of said alleged bonds and coupons the defendant, and its officers, agents, and attorneys, have no knowledge or information sufficient to form
19 a belief, and therefore defendant demands proof of the allegation that the plaintiff is the owner, holder, and bearer of said alleged bonds and coupons.

Whether or not on the first day of January, A. D. 1874, or at any other time, the said alleged coupon was duly presented for payment at the Exchange National Bank in the city of New York, and payment thereof was refused, the defendant, and its officers, agents, and attorneys, have no knowledge or information sufficient to form a belief; and therefore defendant demands proof of the allegation that the said alleged coupons were duly presented for payment on the said first day of January, A. D. 1874, at the bank aforesaid, and payment thereof refused.

Defendant denies that the amount of said alleged coupons or any of them, or any part thereof, remain due from the defendant to the plaintiff.

Defendant denies that said bonds and coupons have come to and are the property of the plaintiff, or that he has been or is now the true and lawful holder or bearer thereof, for value, without notice.

Denies that C. W. Narramore, the then presiding justice of the county court of Ray County, and George N. McGee, the clerk, as officers or agents of this defendant, had power, either in the charter of the S't Louis and S't Joseph Railroad Company, or by the assent of the qualified voters of said Ray County, to subscribe to the capital stock of said railroad company, and issue bonds in payment thereof;
20 but states the facts to be, that if such bonds were made, issued, and delivered as in plaintiff's petition is alleged, were wholly unauthorized by this defendant, and made without its knowledge or consent; of all which facts the plaintiff had full notice.

Defendant, further answering, states that the S't Louis and S't Joseph Railroad Company was incorporated under the general incorporation

act entitled "Railroad Companies," chapter 63 of the General Statutes of Missouri; that the corporators named in the chapter organized under the same on the 31st day of December, A. D. 1867; that by the provisions of the charter so obtained the company was authorized to construct a road from the West Branch of the North Missouri Railroad, at Richmond, in Ray County, through Plattsburgh, to S't Joseph, Missouri, and that the general statute under which it received its charter did not authorize any county through which said railroad may be located to subscribe to the stock of said railroad company, and issue bonds of such county to raise funds to pay the same, unless two-thirds of the qualified voters of such county first give their assent thereto. And this defendant denies that there was any election held in and by said county of Ray at any time in reference to making any subscription to the stock or loaning the credit thereof to the said railroad company.

Defendant, further answering, states that the S't Louis and S't
21 Joseph Railroad Company had no power or authority by its charter, or by the statute entitled "Railroad Companies," under which said railroad company received its charter, according to the provisions and terms of said act, to take and receive bonds and coupons in payment of the amount of stock pretended and alleged to have been subscribed by this defendant in said railroad company.

Defendant, further answering, states that on the 2nd day of July, A. D. 1860, the county court of Ray County made an order for an election, to be held in the various election-districts of said county, on the 13th day of August, 1860, for the purpose of obtaining the assent of the qualified voters of said county to a subscription of two thousand shares of stock in the Missouri River Valley Railroad Company, said shares of stock to be one hundred dollars each. That on the 8th day of November, 1860, the said county court canvassed the returns of said election and determined the result in favor of said subscription, and on the same day authorized, through agents appointed for that purpose, the said subscription to be made; that in obedience to said order of court the said subscription of two thousand shares was made, but that no bonds of Ray County were issued in payment of said stock so subscribed for as aforesaid.

Defendant, for further answer, states that the Misssouri River Valley Railroad Company failed and refused to comply with the terms and conditions set forth in the order of said county court made on
22 the 2nd day of July, A. D. 1860, and that on the 4th day of April, A. D. 1864, the said county court, without any authority, either in the charter of said railroad company or by an election of the qualified voters of said county first had whereby the assent of said voters was obtained, made an order authorizing the agents appointed by said court to represent the interests of said county in said Missouri River Valley Railroad Company to transfer and assign to the North Missouri Railroad Company all of the effects and assets, rights and privileges belonging to the said Missouri River Valley Railroad Company. That the said transfer, so agreed upon and ordered by the county court of Ray County, was, on the 18th day of December, A. D. 1866, ratified and signed by the justices of the said county court without any authority of law, and which transfer, so made, did not bind the county of Ray for the subscription made to the Missouri River Valley Railroad Company.

Defendant, further answering, states that the North Missouri Railroad Company failed and refused to comply with the terms and agreements made and entered into by its officers and the justices of the county court

of Ray County, as is hereinbefore referred to; did, on the 15th day of April, A. D. 1868, at a general monthly meeting of its board of directors, held in S't Louis, Missouri, authorize and empower the president, in conjunction with the executive committee of said company, to
23 make such contracts with the S't Louis and S't Joseph Railroad Company to aid the building of said road, and also to release the county of Ray from its subscription of $200,000 to aid in building the West Branch of the North Missouri Railroad, upon the condition that this company is released from the constructing a spur from the West Branch to Richmond, and also upon the further consideration that Ray County will subscribe $250,000 stock, and secure the same, to be paid towards the building of the S't Louis and S't Joseph Railroad. That on the 19th day of May, 1868, the above proposition was presented to the county court of Ray County, and was by it duly considered and its acceptance declined. That said county court, on said 19th day of May, A. D. 1868, did, on its own motion, without any authority in the charter of the S't Louis and S't Joseph Railroad Company, or without the assent of the qualified voters of said county of Ray first had and obtained, authorize the transfer of subscription to two thousand shares of stock to the S't Louis and S't Joseph Railroad Company, upon the condition that the North Missouri Railroad Company release the county of Ray from the subscription hereinbefore referred to. That said release was made and signed by the North Missouri Railroad Company, and entered of record in the office for the recording of deeds in Richmond, Ray County, on the 8th day of July, A. D. 1868.

Defendant further states that the orders of the county court,
24 in Ray County, in substance hereinbefore set forth, are the only orders made by the said county court in any manner authorizing the making and execution of the bonds of said county to the S't Louis and S't Joseph Railroad Company; that under the terms and requirements of the constitution and general laws of the State of Missouri, two-thirds of the qualified voters of said county of Ray, or any other number, voting at any election, have never, at any time, given their assent at a general or special election held in said county to such subscription and authorized the issue of bonds to the S't Louis and S't Joseph Railroad Company; that no bonds of the denomination of one thousand dollars, or any other sum, with coupons attached, have been executed, issued, and delivered in accordance with the provisions of the constitution and laws aforesaid.

Defendant states that having fully answered all matters herein, prays to be dismissed with his costs, &c.

W. S. EVERETT,
JAMES L. FARRIS,
Attorneys for Defendant.

And afterwards, at the November term, A. D. 1874, of said circuit court, the following further proceedings were had in this case on the 17th November, 1874, to wit:

Replication filed.

HORATIO D. VANSYCKEL } *vs.* RAY COUNTY. } No. 245.

25 Now comes the plaintiff by his attorneys, Philips & Vest, and files replication to the answer herein.

The replication filed as aforesaid is in the words and figures following, to wit:

Replication.

In the circuit court of the United States for the eight' circuit and western district of Missouri.

HORATIO D. VANSYCKEL, PLAINTIFF,
vs.
RAY COUNTY, DEFENDANT.

Now comes the plaintiff, and for reply to the new matter set up by defendant in its answer herein filed, says that it is not true, and plaintiff denies that the bonds issued and delivered by defendant, as in plaintiff's petition alleged, were unauthorized by defendant, and made without its knowledge or consent, and denies that plaintiff had knowledge of such facts.

Plaintiff says that he has no knowledge or information sufficient to form a belief whether the charter of the S't Louis and S't Joseph Railroad Company, or the general statute under which said company was organized, did not authorize any county, through which said railroad may be located, to subscribe to the stock of said railroad company, and issue bonds of such county to raise funds to pay the same, unless two-thirds of the qualified voters of such county first give their assent thereto. Nor has plaintiff any knowledge or information sufficient to form a belief
26 whether there was any election held in and by said county of Ray, in reference to making subscription to the stock, or loaning the credit of said county, to the S't Louis and S't Joseph Railroad Company.

Plaintiff denies that the S't Louis and S't Joseph Railroad Company had no power or authority by its charter, or by the statute under which it was organized, to take and receive bonds and coupons in payment of the stock subscribed by defendant to said company.

Plaintiff says he has no knowledge or information sufficient to form a belief whether the Missouri River Valley Railroad Company failed and refused to comply with the terms and conditions set forth in the order of the county court of Ray County, made on July 2nd, 1860, as stated by the answer, but plaintiff denies that on April the 4th, 1864, the said county court, without any authority, made an order authorizing its agents representing the interests of said county in said Missouri River Valley Railroad Company, to transfer and assign to the North Missouri Railroad Company, all of the effects and assets, rights and privileges belonging to said Missouri River Valley Railroad Company.

Plaintiff denies that said transfer so made on December the 18th, 1866, was without any authority of law, and denies that the same did
27 not bind the county of Ray for its subscription made to said Missouri River Valley Railroad Company.

Plaintiff says that he has no knowledge or information sufficient to form a belief whether the North Missouri Railroad Company failed and refused to comply with the terms and agreements made and entered into by its officers and the justices of said county court of Ray County, as alleged by the answer.

Plaintiff admits that the North Missouri Railroad Company afterwards proposed to said county court of Ray County to release said county from its subscription of $200,000 to aid in building the west branch of the

North Missouri Railroad, upon condition that said North Missouri Railroad Company should be released from the constructing a spur from the said west branch to Richmond, and also upon the further consideration that Ray County will subscribe $250,000 stock to the S't Louis and S't Joseph Railroad Company.

Plaintiff denies that said county court of Ray County, after declining said proposition, did on May 19th, 1868, without any authority, authorize the transfer of the subscription of two thousand shares of stock to the S't Louis and S't Joseph Railroad Company.

Plaintiff admits that said county court did make said subscrip-
28 tion to the S't Louis and S't Joseph Railroad Company, and that the North Missouri Railroad Company thereupon released the county of Ray from its subscription to the capital stock of said North Missouri Railroad Company.

Whether the order of said county court of Ray County, as set forth in defendant's answer, are the only orders of said court concerning the making said bonds to the S't Louis and S't Joseph Railroad Company, and whether said bonds were issued without any vote by the citizens of Ray County, plaintiff has no knowledge or information sufficient to form a belief.

Plaintiff further replying, states that the bonds to which the coupons sued upon were attached, were issued by the county court of Ray County, in payment of its subscription to the capital stock of the S't Louis and S't Joseph Railroad Company; that the defendant received for said bonds a certificate of stock to the full amount of said bonds from said company, and now holds the same; that said bonds were sold by said railroad company in the eastern markets, and plaintiff became the purchaser of the coupons sued upon herein, and the bonds to which they were attached, before the maturity of said bonds and coupons, and for value. That the proceed of the sale of said bonds and coupons were ex-
29 pended by said railroad company in constructing said railroad in Ray County, and the bonds were issued from time to time by the said county court as the work progressed, and in accordance with the terms of the order of subscription; that defendant having levied taxes for that purpose on the property of its citizens, has paid all the interest-coupons accruing upon said bonds from November the 2nd, 1868, to the time when the coupons herein sued upon became due. And plaintiff says that he purchased said bonds and coupons without any knowledge of the facts alleged in defendant's answer, and relying upon the recitals upon the face of said bonds, that they were issued under and pursuant to an order of the county court of Ray County, made under authority of the constitution of the State of Missouri and laws of the general assembly of the State of Missouri, and authorized by a vote of the people of said county at a special election held for that purpose.

Wherefore plaintiff says that defendant is estopped from its pretended defence herein, and he is entitled to judgment as prayed in his petition.

PHILIPS & VEST,
For Pl'ff.

And afterwards, at said last-mentioned term of said circuit court, the following further proceedings were had on the 18th day of November, 1874, to wit:

30 *Stipulation filed.*

HORATIO D. VANSYCKEL } No. 245.
vs.
RAY COUNTY. }

Now come the said parties by their attorneys and file stipulation for a continuance, and cause continued accordingly; which stipulation is as follows:

Stipulation.

In the circuit court of the United States, western district of Missouri.

HORATIO D. VANSYCKEL, PLAINTIFF, }
vs.
RAY COUNTY, DEFENDANT. }

It is hereby stipulated by and between Philips & Vest, attornies for plaintiff herein, and W. S. Everett, attorney for defendant, that it shall only be necessary for defendant to plead to one count of the petition, the other counts to abide the result as to that count. It is further agreed that plaintiff is admitted to be a bona-fide owner and holder of the bonds and coupons sued on herein, before maturity and for value, and without actual notice of the alleged defects set up by the answer in defence. It is further agreed that the plaintiff may before trial add to his petition counts upon other coupons of the same class and issue of bonds herein sued on, so as to make the amount sued for in this case exceed two thousand dollars.

PHILIPS & VEST,
For Pl'ff.
W. S. EVERETT,
Att'y for Def't.

31 And afterwards, on the 24th day of February, 1875, it being in vacation of said circuit court, the following amended petition was filed in this case, to wit:

First amended petition.

In the circuit court of the United States for the western district of Missouri.

HORATIO D. VANSYCKEL, PLAINTIFF, }
vs.
RAY COUNTY, DEFENDANT. }

Now comes the plaintiff and, by consent of counsel first had, files this his amended petition, and states that on January the first, 1874, the interest on bonds numbered 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, and 200, (which interest is represented by the coupons herewith filed,) became due, viz: Fifty coupons of forty dollars each, and amounting in the aggregate to two thousand dollars; the said bonds and coupons being of the same issue with the bonds and coupons sued on in the original petition.

Plaintiff states that he is the owner and bearer of said coupons, and that defendant refuses to pay the same or any part thereof. Wherefore plaintiff asks judgment for two thousand dollars, the amount of said coupons, and eight per cent. interest on each sum of forty dol-
32 lars, from the time each coupon became due, and for costs.

HENDERSON & SHIELDS and
PHILIPS & VEST,
For Pl'ff.

And afterwards, on the 2nd day of April, 1875, it being in vacation of said circuit court, the following second amended petition was filed in this case, to wit:

Second amended petition.

In the circuit court of the United States, western district of Missouri.

HORATIO D. VANSYCKLE, PLAINTIFF,
vs.
RAY COUNTY, DEFENDANT.

Now comes the plaintiff, and for his amended petition herein, by leave of court and consent of counsel of defendant, states that on January the first, 1874, the interest on bonds numbered 311, 312, 313, and 314 became due, being four coupons of eight dollars each, making in all thirty-two dollars; and that on January the first, 1874, the interest on bonds numbered 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, being fifty coupons of forty dollars each, making in all two thousand dollars, fell due; and that on January the first, 1874, the interest on bonds numbered 95, 96, 97, 98, 99,
and 100 became due, being six coupons of eighty dollars each,
33 amounting to four hundred and eighty dollars. That said bonds are of the same issue with those sued upon in the original petition herein, a copy of one of which bonds is thereto attached.

Plaintiff states that he is the bearer of said bonds and coupons, and that defendant has neglected and still neglects, though often requested to pay said coupons, so to do, whereby defendant has become liable to pay, and an action has accrued to plaintiff to have and recover of defendant the sum of two thousand five hundred and twelve dollars, ($2,512,) the amount of said coupons, with interest at the rate of eight per cent. per annum on the amount of said coupons, respectively, from the time each of them became due.

Wherefore plaintiff asks judgment for said amount of $2,512, with interest as aforesaid, and costs.

PHILIPS & VEST,
For Pl'ff.

And afterwards, at the April term, 1875, of said circuit court, the following further proceedings were had in this case on the 23d day of April, 1875, to wit:

Hearing of cause argued and submitted.

HORATIO D. VANSYCKEL
vs.
RAY COUNTY.
No. 245.

This day come the parties by their attorneys, the plaintiff by Mess'rs

34 Henderson, Philips and Vest, and the defendant by W. S. Everett, esqr., and this case being regularly called for trial, both parties being ready, an agreement of counsel to waive a jury having been this day filed, this case was thereupon tried by the court sitting as a jury, and was argued by counsel and submitted to the court upon the pleadings and proofs.

The jury waiver, filed as aforesaid, is in the following words and figures, to wit:

Jury waiver.

In the circuit court of the United States, western district of Missouri.

HORATIO D. VANSYCKEL, PLAINTIFF,
vs.
THE COUNTY OF RAY, DEFENDANT.

It is hereby stipulated by and between Henderson & Shields and Philips & Vest, attornies for plaintiff herein, and Everett and Farris, attornies for defendant, that a jury is hereby waived for the trial of this cause in this court, and the same is submitted to the court for its finding and judgment.

HENDERSON & SHIELDS,
PHILIPS & VEST,
For Pl'ff.
EVERETT & FARRIS,
Att'ys for Defendant.

35 And afterwards, at said last-mentioned April term of said circuit court, the following further proceedings were had in this case, on the 24th day of April, A. D. 1875, to wit:

Finding of court & judgment.—Special finding of facts filed.

HORATIO D. VANSYCKLE
vs.
THE COUNTY OF RAY. } No. 245.

This day come again the parties by their respective attorneys, and this case having been heretofore tried by the court, sitting as a jury, and having been argued by counsel and submitted on the pleadings and proofs, on consideration whereof, and being fully advised in the premises, the court finds for the plaintiff on the issues joined herein, and that said defendant is indebted to the plaintiff by reason of the nonpayment of the coupons or interest-warrants in the petition described in the sum of five thousand five hundred and thirty-seven dollars and six cents, ($5,537.06,) and the special finding of the court is ordered to be filed and made a part of the record herein.

It is therefore now considered by the court that the plaintiff, Horatio D. Vansyckle, recover against the defendant, the county of Ray, in the State of Missouri, the sum of five thousand five hundred and thirty-seven dollars and six cents, ($5,537.06,) the amount so as aforesaid found to be due by the court, and the costs and charges herein expended, and that execution issue therefor.

MEM.—This judgment bears interest at the rate of seven per cent. per annum.

36 **Special finding of court as referred to in foregoing order is in words and figures as follows, to wit:**

Special finding of facts.—Extracts from Mo. statutes, &c.

HORATIO D. VANSYCKLE, PL'FF,
against
RAY COUNTY, DEF'T. } April term, 1875.

In the United States circuit court for the eighth circuit and western district of Missouri.

This cause coming on for trial, an agreement of counsel for plaintiff and defendant is filed in open court, whereby a jury is waived and the case submitted to the court; the court specially finds the facts to be as follows:

1. An act was passed by the general assembly of the State of Missouri on December 5th, 1859, to incorporate the Missouri River Valley Railroad Company, with power and authority to construct a railroad from any point on the North Missouri Railroad, in Randolph County, by way of Brunswick, in Chariton County, thence through Carroll, Ray, and Clay Counties to any point on the Missouri River in Platte County. The 20th section of this act authorized the county court of any county in which any part of the route of said railroad may be to sub-
37 scribe to the stock of said company, and to issue bonds in payment thereof.

"SECTION 20. It shall be lawful for the county court of any county in which any part of the route of said railroad may be to subscribe to the stock of said company, and it may invest its funds in the stock of said company, and may raise such funds by tax, to be voted by the legal voters of such county, in such manner as such county court may prescribe, for the purpose of paying such stock; and said county court may take proper steps to protect the interests of such county. Such county court may appoint an agent to represent the county, vote for it, and receive its dividends. Any incorporated city, town, or incorporated company may subscribe to the stock of said railroad company, and appoint an agent to represent its interests, give its vote, and receive its dividends, and may take proper steps to guard the interest of such city, town, or corporation. But the funds subscribed by any town or city must not be in bonds, but subscribed as prescribed for counties. And it shall be further lawful for any county court that may subscribe stock to levy and collect a special tax for the purpose of paying said subscriptions of stock; and shall deliver to each tax-payer special receipts for the amount of taxes so levied and paid, which said receipts shall
38 be transferable; and when any such receipts shall be procured or held to the amount of one hundred dollars by one individual, such person shall be entitled to a certificate of stock for one share of the capital stock of said company upon presentation of such receipts to the amount aforesaid. Cities and towns subscribing stock to said company may raise the funds in the same manner as herein prescribed for counties, and its tax-payers shall have all the advantages herein given to county tax-payers, and shall proceed in the same manner. An account shall be kept between counties, towns, and cities so subscribing the stock, and whenever a certificate of stock shall issue to any stock-payer said company shall call in an equivalent certificate due, to be held by such county, city, or town.

"SECTION 21. All the provisions of the general railroad law not inconsistent with this act shall be extended and apply to said company."

2. An act was passed by the general assembly, and approved March 30th, 1860, entitled "An act to amend the aforesaid act, and for other purposes," which said act is on pages 15 & 16 of the acts of the called session of February 27th, 1860.

"§ 3. The county courts, respectively, of the counties of Randolph, Chariton, Carroll, Ray, Clay, and Platte are hereby authorized and empowered to issue bonds of their respective counties upon the following terms and conditions: When either of the above-named counties shall have subscribed to the capital stock of the Missouri River Valley Railroad Company, or when either of said counties shall become the owner by purchase of stock in the capital stock of said company, then the county court of said county so subscribing or purchasing stock as aforesaid is hereby authorized and empowered to issue and deliver in payment of said subscription or purchase the bonds of the county in the sum of not exceeding one thousand dollars, each bond having not exceeding ten years to run to maturity, bearing interest at the rate of eight per cent. per annum, payable annually at the county seat of such county, or in the city of S't Louis, as the county court may prefer."

3. Under the provisions of this act and the general railroad law an order was made by the county court of Ray County providing for an election to be held in said county on the 13th day of August, 1860, on the question as to whether the county should take 2,000 shares, of $100.00 each, in the aforesaid railroad company; which said election was duly held and the stock accordingly legally subscribed by the county.

4. Afterwards, to wit, on the 10th day of February, 1864, an act was passed by the general assembly of the State of Missouri, entitled "An act for the extension and completion of the Pacific Railroad to the western boundary of the State at Kansas City, and the North Missouri Railroad to the Iowa State line—to complete the southwest branch of the Pacific Railroad, and to reduce the State indebtedness." The 12th section of said act is as follows:

"The Chariton and Randolph Railroad Company and the Missouri Valley Railroad Company may, by a vote of a majority of their stockholders in interest, transfer and assign to the North Missouri Railroad Company all of their effects and assets, rights and privileges, under their respective charters, and all the work that has been done in the construction of the said roads; and upon such transfer being accepted by the North Missouri Railroad Company, the said Chariton and Randolph Railroad Company and the Missouri Valley Railroad Company shall cease to have a corporate existence, and shall be styled and known as the west branch of the North Missouri Railroad; said west branch to commence at the town of Moberly, in the county of Randolph, on the North Missouri Railroad, and extend west along the route adopted by the Chariton and Randolph Railroad Company to the city of Brunswick; and thence on or near the present survey of the Missouri Valley Road to Richmond, in Ray County; and from thence by the most advantageous and practicable route to some point on the north side of the Missouri River, at or below S't Joseph. And all the franchises vested in the said Chariton and Randolph Railroad Company and the Missouri Valley Railroad Company shall become, by such transfer and acceptance as aforesaid, fully and completely vested in the North Missouri Railroad Company; provided, however, that if the transfer and acceptance aforesaid is not made by and between the said Chariton and Randolph

Railroad Company, the Missouri Valley Railroad Company, and the North Missouri Railroad Company, and a connection thereby formed, as is contemplated may be done by this act, then, and in that event, the Missouri Valley Railroad Company shall have full power to issue the same amount in bonds herein provided to be issued by the North Missouri Railroad Company for the benefit of the said west branch of the North Missouri Railroad as aforesaid; said bonds, when issued by the Missouri Valley Railroad Company, to be issued in like manner, with like effect, and with the same lien on the Missouri Valley Road, in all respects, and to all intents and purposes, as if the same had been issued by the North Missouri Railroad Company for the benefit of said west branch. And provided further, no connection formed by and between the Chariton and Randolph Railroad Company, the Missouri Valley Railroad Company, and the North Missouri Railroad Company, shall operate or have the effect to create any lien upon the said west branch aforesaid for any liabilities of said North Missouri Railroad, or for any State bonds issued for the benefit of said road prior to the transfer, acceptance, and connection provided for, as herein aforesaid, shall have been made. And provided further, that the said west branch shall not be liable for any of the indebtedness or liabilities of the main line of said North Missouri Railroad; that the accounts and business of the said North Missouri main line and the said west branch shall be kept separate and distinct from each other, so that one road shall not become or be held liable for the liabilities and indebtedness of the other."

5. The stockholders of the North Missouri Railroad Company accepted within sixty days after the passage of the aforesaid act the provisions of this act and filed their acceptance in the office of the secretary of state.

6. The Chariton and Randolph Railroad Company and the Missouri River Valley Railroad Company in April, 1864, legally transferred and assigned to the North Missouri Railroad Company all of their effects and assets, rights, and privileges under their respective charters, together with all the work done on their respective roads, according to the provisions of the 12th section of said act.

7. An act was passed by the general assembly of the State of Missouri, approved February 16th, 1865, entitled "An act for the completion of the North Missouri Railroad and its west branch, and for the construction of a bridge over the Missouri River," which was duly accepted by the North Missouri Railroad Company. The 14th section of said act is as follows, to wit:

"§ 14. The North Missouri Railroad Company shall locate its west branch road from Richmond, in Ray County, through Clay County, and thence through Platte County to Weston, on the most practicable route; provided that the said Clay and Platte Counties shall each subscribe two hundred thousand dollars toward the construction of said west branch road; and if the said company do not find it practicable to locate their road so as to touch the Missouri River opposite the city of Kansas, then it shall be competent for said company at any time to construct a branch of their road from any point in Clay County to said city of Kansas, and may contract with the Kansas City, Galveston and Lake Superior Railroad Company for so much of its road as may be desired for their main line or branch aforesaid."

8. On the 13th day of December, 1866, a contract was made and entered into between the North Missouri Railroad Company and the justices of the county court of Ray County, in the following words, to wit:

45 *Contract between N. Mo. R. R. Co. and Ray Co. Court.*

"Agreement of county court of Ray County and North Missouri Railroad Company.

"This contract and agreement, made and entered into by and between the county of Ray, in the State of Missouri, of the first part, and the North Missouri Railroad Company, of the State of Missouri, of the second part, witnesseth: That the contract heretofore entered into between the parties hereto is hereby changed, modified, and annulled, as herein specified, so far as it conflicts with anything contained in this contract and agreement.

"The North Missouri Railroad Company, for the consideration of one hundred and fifty thousand dollars, to be paid in the bonds of said county of Ray, hereby agrees and contracts to build, run, and operate the west branch of the North Missouri Railroad to the city of Richmond, in said county of Ray, by a spur of said west branch, and complete said spur connection with said city of Richmond by railroad within ninety days after the main or straight line of said west branch of the North Missouri Railroad is completed to a point opposite said city of Richmond, in said county of Ray aforesaid, and to erect the necessary depot buildings for freight and passengers to be transported to and from
46 Richmond, except those for stock, within the corporate limits of said city of Richmond, in said county of Ray, and the necessary stock-pens within a half mile of the said corporate limits of said city of Richmond aforesaid, and at such depots furnish the usual facilities furnished at depots between S't Charles and Macon City, or at the points on said west branch of said North Missouri Railroad having like demands for depot accommodations for business as said city of Richmond; and the depot buildings shall be as good at this time erected between S't Charles and Macon City, and their capacity will be increased from time to time as that company shall find the business requires, and that part of the road running up to said city of Richmond aforesaid shall be as good and equal in all respects to any other part of the road, except the grades will be steeper than on the main or straight line of said west branch of the North Missouri Railroad; and the North Missouri Railroad Company hereby further obligates itself and agrees to maintain and operate said west branch of its road, by the spur aforesaid, to the said city of Richmond, and run trains over the said road so extended and constructed to said city of Richmond, as aforesaid, to meet all regular daily trains for passengers and freight on the main or straight line of said west branch of said
47 road aforesaid that stop at the principal stations and depots along the main or straight line of said west branch of said North Missouri Railroad; and that all freight to go from the said city of Richmond, aforesaid, shall be received at and transported and carried by railroad from the depots in said city of Richmond aforesaid, and that all freight to go to said city of Richmond shall be transported and carried by railroad to the depots in said city of Richmond aforesaid, without change of cars, with the exception of express freight, and in case of accident or disabled cars; and the same rule shall be observed in regard to passengers, if there shall be a half car-load or more; if there shall be less than a half car-load, then it may be optional with said North Missouri Railroad Company to transfer and carry said passengers through to and from said city of Richmond or require the passengers to change cars at the junction with said main or straight line of

said road, and that said change of cars shall not operate as a delay further than the time required to change, but that passengers shall be transported and carried through by railroad to and from the depot in said city of Richmond, aforesaid, without any unnecessary delay by reason of said change of cars, as aforesaid; and the said North Missouri Railroad Company hereby agree and obligates itself to furnish to
48 said city of Richmond, aforesaid, such railroad facilities and accommodations for the transportation and carrying of freight and passengers to and from the depots in said city of Richmond, aforesaid, as it furnishes to depots of like importance, and as it would if said city of Richmond was located in the main or straight line of said west branch of the North Missouri Railroad.

"It is understood that the telegraph-line on the main line of the North Missouri Railroad does not belong to said North Missouri Railroad Company, but that the company, for its own business, has the use of the line for certain considerations in keeping the line in repair, transporting materials, &c., and that said railroad company will erect, or cause to be erected, to Richmond, a telegraph-line so soon as it has one erected on said west branch, as far as Richmond; and that, so far as said company may have control of the matter, the said city of Richmond shall have the same privileges that are allowed to other points reached by telegraph on said North Missouri Railroad. The said North Missouri Railroad Company agree to operate said road to the city of Richmond, in said Ray County, as long as any other part of the west branch is operated, and at no time in any way discriminate against said city of Richmond in rates for freight or passengers; but, on the contrary, that the
49 said company will keep in view the interests of said city of Richmond and the county of Ray aforesaid, and that said city of Richmond and county of Ray will in like manner endeavor to promote the interests of said North Missouri Railroad Company; and the said North Missouri Railroad Company obligates itself further never to aid, directly or indirectly, the building up of a town at the point of junction where the railroad spur departs to run to said city of Richmond aforesaid, except so far as it reserves the right to put up all such buildings at said point of junction aforesaid as time and experience shall show to be necessary for said road to have for the accommodation of its business at this point. And it is further agreed that such shops and engine-houses as may be wanted by said North Missouri Railroad Company at said city of Richmond, to operate said railroad to said point, shall be erected in or as near to it as ground can be economically had for the purpose. It being the true interest and spirit of this contract, and the North Missouri Railroad Company hereby agrees and obligates itself to furnish to said city of Richmond the same railroad facilities in all respects as it would have if said city of Richmond was located on the main or straight line of said west branch of the North Missouri Railroad. And in consideration that said county of Ray hereby con-
50 sents and agrees to accept the building, operating, and running the said west branch of the North Missouri Railroad to said city of Richmond, in said county of Ray, as herein aforesaid, instead of the route and depot agreed upon heretofore, and releases said North Missouri Railroad Company from its former obligations, as herein specified, the said North Missouri Railroad Company hereby releases the said county of Ray from the sum of fifty thousand dollars of the stock heretofore subscribed for the construction of said west branch of the North Missouri railroad to said city of Richmond, in said county of Ray aforesaid. And the said North Missouri Railroad Company hereby agrees to

build and construct that portion of said railroad, herein aforesaid, from the main or straight line, as herein aforesaid, to the said city of Richmond aforesaid, so far as the grading is concerned, when said county of Ray issues its bonds for the said sum of one hundred and fifty thousand dollars to said North Missouri Railroad Company, so that it may be ready for the iron by the time the said west branch of said North Missouri Railroad reach' a point opposite the said city of Richmond aforesaid. That upon the issuing of said bonds by said county of Ray as aforesaid, the North Missouri Railroad Company hereby obligates itself to issue certificates of paid-up stock in the said North Mis-
51 souri Railroad Company to the said county of Ray for the said sum of one hundred and fifty thousand dollars. The bonds to be issued by said county of Ray as aforesaid, are to be prepared by the North Missouri Railroad Company, and the expenses of preparing them to be paid by said county of Ray. The said North Missouri Railroad Company hereby further obligates itself to carry to the said city of Richmond aforesaid, the usual mails that are carried to other points and stations on the main or straight line of said west branch of the North Missouri Railroad, when thereunto authorized by the Government.

"Witness whereof, the official signature of the president of the North Missouri Railroad Company, authorized by resolution of the board of directors of the North Missouri Railroad Company, with seal of company attached, and of the justice' of the county court of Ray County, of the State of Missouri, under the order of said court, with the official seal of said court attached, on this thirteenth day of December, A. D. 1866. Signed in duplicate.

"THE NORTH MISSOURI RAILROAD COMPANY,
[L S.] "By ISAAC H. STURGEON, *President.*
"CALVIN W. NARRAMORE,
[L. S.] "WILLIAM McKISSACK,
"WILLIAM CROWLEY,
"*Justices of the County Court of Ray County, Mo.*

"Filed for record December 18, 1866.

[40-cent U. S. revenue-stamp affixed.]

52 "STATE OF MISSOURI,
"*County of Ray, ss:*

"I, James T. Harris, recorder of deeds within and for the county and State aforesaid, certify that the above and foregoing is a true copy of an agreement made and entered into by and between the North Missouri Railroad Company and the county of Ray, in the State of Missouri, as the same appears of record in my office in book H, at page 20, and following.

"In testimony whereof I have hereunto set my hand and 'fixed my official seal, at my office in the city of Richmond, Mo., the 7th day of April, A. D. 1874.

[SEAL.] "JAMES T. HARRIS, *Recorder.*"

The following orders were passed and entered of record on the minutes of the county court of Ray County, to wit:

53 *Orders of Ray Co. Court.*

"The records of the county court of Ray County, Missouri.

"It is ordered by the county court of the county of Ray, in the State of Missouri, that a vote of the people of the county of Ray, in the State

of Missouri aforesaid, be taken on Monday, the 13th day of August, 1860, at the several places of voting, on the question as to whether the county of Ray shall take two hundred thousand dollars of stock in the Missouri River Valley Railroad Company upon the following conditions:

"First. That all of said county stock shall be expended in that part of the railroad in said county of Ray; that said subscription shall be payable in county bonds to run ten years, bearing interest at the rate of eight per cent., the interest to be paid annually.

"Thirdly. That no bond shall be issued or delivered to said company until provision shall be made for building the said railroad to the eastern boundary of the county of Ray, aforesaid. It is further ordered that the clerk of this county make out poll-books for two thousand shares of stock, of one hundred dollars each, amounting to two hundred thousand dollars, in the Missouri River Valley Railroad Company, by the county of Ray, to be subscribed by the county court, and against taking county stock in the Missouri River Valley Railroad Company; and that
54 notice be given by publishing a copy of this order in the Northwest Conservator, a newspaper published in the city of Richmond, and by six written or printed handbills posted in six public places in the county of Ray; and it is further ordered that there be judges appointed for the several voting precincts in said county of Ray; and it is ordered that John P. Quesenberry, James Patton, and Thomas J. Bohannan be, and are hereby, appointed judges for Richmond Township: Thomas Roe, Matt. Hamilton, and E. D. Porter, for Fishing River Township; Stokely William, David G. Stockwell, and William Cox, for Polk Township; L. H. Magill, Solomon Craven, and Henry Grimes, for Knoxville Township; Thomas McCuistron, W. L. Bransford, and Thomas Banister, for Grape Grove Township; Wilburn Snowdin, James Shackelford, and Argile Beggess, for Crooked River Township; John Elliott, W. D. McDee, and L. S. Menefe, for Camden Township."

"And afterwards, at the November term of said court, on Thursday, the 8th day of November, 1860, the following proceedings were had, viz:

"Whereas this court, on the 2d day of July, 1860, ordered that the question as to taking two thousand shares of stock, of one hundred dollars each, amounting to two hundred thousand dollars, in the Mis-
55 souri Valley Railroad Company, upon certain conditions therein mentioned, be submitted to the people of Ray County at an election to be held on the 13th day of August, 1860; and whereas at the said election 1,337 votes were cast in favor of the subscription of the said stock upon the conditions therein mentioned, and 623 votes were cast against the subscription, being a majority of the people and taxpayers of the county of Ray, in favor of the said subscription; and whereas the board of directors of the Missouri Valley Railroad Company being organized, and the books for the subscription of said stock have this day been opened: It is therefore ordered by the court that George M. Dunn, Joseph S. Hughes, and Austin A. King be, and they are hereby, appointed agents of the county of Ray, aforesaid, to subscribe and vote the said two thousand shares of stock, of one hundred *thousand* dollars each, amounting to two hundred thousand dollars, for the county of Ray, upon the conditions mentioned in the order of the court first above mentioned.

"And afterwards, at the April term of said court on Monday, the 4th day of April, 1864, the following proceedings were had, viz:

"Whereas the county of Ray has subscribed two thousand shares of stock to the Missouri Valley Railroad Company, amounting to the sum

of two hundred thousand dollars; and whereas, an election for directors of said Missouri Valley Railroad Company is to be held at Richmond, in the county of Ray aforesaid, on the 11th day of April, 1864, being on the second Monday in April for said year 1864:

"It is therefore ordered by the court that Joseph S. Hughes,
56 Willis Warriner, and Daniel Parker be, and they are hereby, appointed agents of the county of Ray aforesaid, to vote the said two thousand shares of stock, amounting to the sum two hundred thousand dollars as aforesaid, in the name, for and on behalf of the said county of Ray, for directors in the Missouri Valley Railroad Company as aforesaid, at the election to be held therefor as here aforesaid, and that the agents of county be instructed in the meeting of the stockholders of the Missouri River Valley Railroad Company in favor of transfer'ing and assigning to the North Missouri Railroad Company all of the effects and assets, rights, and privileges belonging to the said Missouri River Valley Railroad Company, under its charter, and all the work that has been done upon said Missouri River Valley Railroad Company as provided may be done by an act of the legislature, entitled 'An act for the extension and completion of the Pacific Railroad to the western boundary of the State, at Kansas City, and the North Missouri Railroad to the Iowa State line, to complete the southwest branch of the Pacific Railroad and to reduce the State indebtedness,' approved February 10th, 1864. Let the agents make written report of their action to the court, and then let the court have the report spread on its proceedings.

57 "And afterward, at the July term of the said court, on Saturday, the 16th day of July, 1864, were had the proceedings following, viz:

"Now, at this day comes D. Parker, Willis Warriner, and Joseph S. Hughes, agents, appointed by the county court of Ray County, in the State of Missouri, to represent the court, under the order of said court dated the 9th day of March, 1864, in casting the vote of said county for the directors of the Missouri River Valley Railroad Company, and for the purpose of voting the stock of the county in said Missouri River Valley Railroad Company, in favor of transfer'ing and assigning all of its effects and assets, rights, and privileges under its charter, and all the work that has been done on said road to the North Missouri Railroad Company as authorized by an act of the legislature of the State of Missouri, entitled 'An act for the extension and completion of the Pacific Railroad to the boundaries of the State at Kansas City, and the North Missouri Railroad to the Iowa State line, to *be* completed the south branch of the Pacific Railroad, and to reduce the State indebtedness,' approved February 19th, 1864.

"Report: That they cast the vote of said county in favor of the following-named persons as directors, viz: Clayton Tiffin, William-
58 F. Yates, George I. Wasson, W. W. Mosby, Henry C. Garner, Clayton Jacobs, John W. Shotwell, Christopher T. Garner, James Hughes, Lafayette S. Menefee, John B. Hale, Louis B. Eley, and Hiram Wilcoxon, and in favor of the transfer and assignment of all the effects and assets, rights, and privileges of the Missouri River Valley Railroad Company and the work done under its charter, to the North Missouri Railroad Company, which report is by the court approved and ordered to be filed and recorded.

"And afterward, at the December term of said court on Tuesday, the 18th day of December, 1866, the following proceedings were had, viz:

"It is ordered by the county court of the county of Ray, State of Missouri, in session on the 18th day of December, A. D. 1866, that the contract between the county of Ray and the North Missouri Railroad Company, bearing date December the 13th, A. D. 1866, executed by the North Missouri Railroad Company, be, and the same is hereby, ratified and signed by the justices of said county court with the seal of said court thereto affixed. And that the bonds of said county of Ray, amounting to one hundred and fifty thousand dollars, be issued according to the orders of the county court of said county of Ray, heretofore made,
59 and the stipulations of this contract.

"And afterward, at the December term of said court, on Wednesday, the 19th day of December, 1866, the following proceedings were had, viz:

"Ordered, That Isaac H. Sturgeon is hereby authorized and appointed as agent for the county of Ray, in the State of Missouri, to vote the stock of said county at the next election of directors for the North Missouri Railroad Company.

"And afterward, at the November term of said court, on the 2nd day of November, 1868, the following proceedings were had, viz:

"IN THE MATTER OF THE APPLICATION OF THE S't Louis and S't Joseph Railroad Company for issue of bonds.

"Whereas satisfactory evidence has been produced to this court that the first five miles of said road north of the west branch of the North Missouri Railroad has been put under contract, as provided in the order subscribing the stock of Ray County to said railroad company, it is therefore ordered by the court that fifty thousand dollars of the bonds of Ray County be issued to said railroad company, and that the presiding justice of this court sign, execute, and deliver the same to
60 said railroad company, or her representative, and that the clerk of this court attest and register the same in a book to be provided for that purpose. And further ordered, that said bonds be dated to bear interest from the first day of January, A. D. 1869, and the coupons to be payable annually on the first day of January of each year.

"And afterward, at the August adjourned term of said court, on the 8th day of September, 1869, the following proceedings were had, viz:

"IN THE MATTER OF THE APPLICATION OF THE S't Louis and S't Joseph Railroad Company for issue of bonds.

"Whereas the court is satisfied that five miles of the S't Louis and S't Joseph Railroad, in addition to the first five miles of said road north of the west branch of the North Missouri Railroad, in Ray County, has been graded and about ready for the ties, it is therefore ordered by the court that fifty thousand dollars of the bonds of Ray County be issued to said railroad company, and that the presiding justice of this court sign the same and deliver the same to the clerk of this court. And it is further ordered that the clerk of this court deliver to said railroad company said bonds when he shall be satisfied that said five miles of

road is fully graded and ready for the ties, and that the amount
61 of accumulated interest on said bonds to day of delivery be taken off in coupons.

"And afterward, at the November term of said court, on Thursday, the 4th day of November, 1869, the following proceedings were had, viz:

"IN THE MATTER OF THE APPLICATION FOR issue of county bonds to S't Louis and S't Joseph Railroad.

"Whereas this court is satisfied that five miles of the S't Louis and S't Joseph Railroad, in addition to the ten miles of said road north of the west branch of the North Missouri Railroad, is graded and ready for the ties, it is therefore ordered by the court that fifty thousand dollars of the bonds of Ray County be issued to said railroad company, and that the presiding justice of this court sign and execute the same, and that the clerk of this court attest the bonds and coupons and deliver the same to the president of the railroad company, or to any one whom he may direct to receive them.

"And afterward, at the February term of said court, on Tuesday, the 8th day of February, 1870, the following proceedings were had, viz:

"It is ordered that, before any more bonds be issued to the S't Louis and S't Joseph Railroad Company, that the officers of said railroad
62 company furnish to this court a sworn statement of the amount of Ray County bonds that have been sold by said company, and to whom sold and the amount realized and how applied, and that certificates for the amount of stock already paid, to wit, the sum of one hundred and fifty thousand dollars, by Ray County, be delivered to this court.

"It is further ordered that said bonds are issued upon the condition that the S't Louis and S't Joseph Railroad Company locate not less than two main and principal depots on said railroad west of Richmond, at the following points: the one at the most suitable place between the county line in Ray County and what is known as Walker's Store, and the other at a suitable point between Richmond and Walker's Store; and that said bonds are not to be delivered to said company until said depots are permanently located by said company as above specified.

"And afterward, at the February term of said court, on Wednesday, the 9th day of February, 1870, the following proceedings were had, viz:

"IN THE MATTER OF THE APPLICATION FOR issue of county bonds to S't Louis & S't Joseph Railroad Company.

"Whereas this court is satisfied that the remainder of the S't Louis and S't Joseph Railroad, in Ray County, to the western boundary
63 thereof, in addition to the fifteen miles of said road north of the west branch of the North Missouri Railroad, is graded and ready for the ties, it is therefore ordered by the court that the remaining fifty thousand dollars of the bonds of Ray County, being the balance of two hundred thousand dollars stock subscribed to said railroad company by Ray County, be issued to said railroad company, and that the presiding

justice of this court sign and execute the same, and that the clerk of this court attest the bonds and coupons and register the same, and deliver the same to the president of said railroad company.

"And afterward, at the August term of said court, on Friday, the 11th day of August, 1871, the following proceedings were had, viz:

"Whereas, in the opinion of this court, the bonds of the county of Ray, State of Missouri, heretofore issued to the S't Louis & S't Joseph Railroad Company, amounting in the aggregate to two hundred thousand dollars, ($200,000.00,) in payment of pretended stock of said Ray County in said railroad company, were issued without authority of law, and were and are null and void; it is therefore ordered by this court that neither the interest which has accrued, or may hereafter accrue, on said bonds, nor the principal of said bonds, nor any part thereof, shall be paid by said county.

64 "It is further ordered that the tax hereafter collected for the purpose of paying the interest and principal of said bonds shall be held and kept by the treasurer of Ray County, subject to the order or orders of this court, and that he shall not pay out any part of the same on account of interest or principal of said bonds. And it is further ordered that to the end and for the purpose of defending or prosecuting all suits in relation to the same, W. P. Hall and M. Oliver, attorneys at law, at S't Joseph, Missouri, copartners under the name and firm of Hall & Oliver, are hereby employed and retained as attorneys for said county of Ray.

"And afterward, at the February adjourned term of said court, on Wednesday, the 6th day of March, 1872, the following proceedings were had, viz:

"It is ordered by the court here that the orders heretofore made by this court on the eleventh day of August, 1871, relative to the payment of the principal or interest on the bonds of Ray County issued to the S't Louis & S't Joseph Railroad Company, be, and the same are hereby, rescinded. And it is further ordered that the treasurer of Ray County apply the funds in his hands belonging to the railroad fund to the payment of the interest on said bonds.

65 "And afterward, at the August term of said court, on Wednesday, the 6th day of August, 1873, the following proceedings were had, to wit:

"It is hereby ordered by the court that the treasurer of Ray County cause to be withdrawn from the American Exchange National Bank, of New York, all monies deposited therein for the payment of interest on bonds issued to the S't Louis & S't Joseph Railroad Company. And it is further ordered that he be, and is hereby, directed not to pay any interest on said railroad bonds until further ordered by this court.

"STATE OF MISSOURI,
"*County of Ray, ss:*

"I, George N. McGee, clerk of the county court within and for the county and State aforesaid, do hereby certify that the above and foregoing is truly copied from the records in my office.

"Witness my hand as clerk, and the seal of Ray County court hereto affixed. Done at office, in Richmond, this 30th day of March, A. D. 1874.

[SEAL.] "GEORGE N. McGEE, *Clerk.*"

66 10. The S't Louis and S't Joseph Railroad Company was organized into a corporation under the general railroad law in force at the time, and a copy of the articles of association appear below, and these articles contain its only corporate authority, to wit:

67 *Charter of S't Louis & S't Joseph R. R. Co.*

"Charter of the S't Louis & S't Joseph Railroad Co.

"OFFICE OF SECRETARY OF STATE,
"*City of Jefferson, Missouri.*

"I, Francis Rodman, secretary of state of Missouri, hereby certify that the annexed pages contain a true, complete, and full copy of the articles of association of the S't Louis & S't Joseph Railroad Company, as appears by comparing the same with the original copy of said articles of association now on file, as the law directs, in this office.

"In testimony whereof, I have hereunto set my hand and affixed my official seal. Done at office, this 13th day of January, A. D. 1868.

[SEAL.] "FRANCIS RODMAN,
"*Secretary of State.*

"ARTICLES OF ASSOCIATION

"For the formation and constitution of a body politic and corporate, to be called the S't Louis & S't Joseph Railroad Company, under the provisions and conditions of the general statutes of the State of Missouri, title 24, of private corporations, chapter 63, of railroad companies, 1865. Witnesseth, that the undersigned have formed themselves into a railroad company, under the name and style of 'the S't
68 Louis and S't Joseph Railroad Company,' and do hereby agree to become a body politic and corporate under and by virtue of the powers granted in the general statutes of the State of Missouri, of 1865, title 24, of private corporations, and particularly under chapter 63, of railroad companies, to possess the powers and privileges granted to corporations, and to be subject to the provisions relating thereto, under said title contained, for the following purpose, to wit:

"For the purpose of constructing, maintaining and operating a railroad for public use in the conveyance of persons and property, and for that purpose do make and sign the following articles of association:

"ARTICLE I. The name of this body politic and corporate shall be the Saint Louis and Saint Joseph Railroad Company.

"ART. II. This company shall continue for the period of ninety-nine years.

"ART. III. This railroad *company* shall be constructed, operated, and maintained from a point in the west branch of the North Missouri Railroad, at Richmond, in Ray County, in the most practicable route in a northwesterly direction through Plattsburg, to the city of S't Joseph, in Buchanan County.

"ART. IV. The length of this road will be about sixty-four miles, and is intended to be constructed through the following counties: Ray,
69 Clinton, and Buchanan.

"ART. V. The amount of the capital stock of this company shall be two millions of dollars, to consist of twenty thousand shares of one hundred dollars each.

"ART. VI. The following shall constitute a board of directors, who

shall manage the affairs of the company for the first year and until otherwise chosen in their places, to wit:

"James H. Robinson, of S't Joseph, Mo.
"Samuel Hays, " "
"Benjamin B. Frazer, " "
"L. M. Lawson, " "
"Thomas J. Chew, " "
"Thomas Harbine, " "
"Thomas B. Weakley, " "
"James H. Birch, j'r, of Plattsburg, Mo.
"Charles Ingles, " "
"Charles W. Porter, " "
"George J. Wasson, of Richmond, Mo.
"John G. Copelin, of S't Louis, Mo.
"C. C. Godfrey, of Hannibal, Mo.

"The number of directors of said company shall be thirteen.

"In witness whereof we have hereto set our names and places of residence and the amount of stock taken by each in the capital-stock of said company:

Names.	Residence.	No. shares.	Amount.
L. M. Lawson	S't Joseph, Mo.	50	$5,000 00
Samuel Hays	" "	50	5,000 00
70 T. J. Chew, j'r	" "	50	5,000 00
Thomas Harbine	" "	50	5,000 00
Ben. B. Frazer	" "	50	5,000 00
Tho's B. Weakley	" "	50	5,000 00
Ja's H. Robinson	" "	50	5,000 00
Ja's H. Birch, j'r	Plattsburg,	50	5,000 00
Charles Ingles	"	50	5,000 00
Charles W. Porter	"	50	5,000 00
George J. Wasson	Richmond, Mo.	50	5,000 00
John G. Copelin	S't Louis,	50	5,000 00
C. C. Godfrey	Hannibal,	50	5,000 00

STATE OF MISSOURI,
County of Buchanan, ss:

"This day personally appeared before me George J. Wasson, Charles Ingles, and L. M. Lawson, who, being duly sworn, on oath say that the amount of one thousand dollars per mile has been subscribed to the capital stock of the S't Louis & S't Joseph Railroad Company, in good faith, and five per cent. paid in cash thereon, and that it is intended, in good faith, to construct, maintain, and operate the road mentioned in the articles of association foregoing.

"L. M. LAWSON.
"GEORGE S. WASSON.
"CHARLES INGLES.

"Subscribed and sworn to before me this 31st day of December, A. D. 1867.

"Filed for record February 15th, 1868, at 1 p. m.

"GEORGE A. PEARCY, *Recorder*."

71 11. It appears that in pursuance of an order of the county court of Ray County, Missouri, dated May 19, 1868, the county

court of Ray County subscribed, on July 1st, 1868, to the capital stock of the S't Louis and S't Joseph Railroad Company the sum of two hundred thousand dollars, which said subscription was made upon the consideration, terms, and conditions named in the order of the county court, and which order is as follows.

72

73 And afterward, at the May term of said court, on the 19th day of May, 1868, the following proceedings were had, viz:

Order of Ray Co. court subscribing stock, &c.

"Whereas, by a vote of the people of Ray County, in the year 1860, two hundred thousand dollars was voted to be subscribed to the Missouri Valley Railroad, and to be applied and expended in the building and construction of said road within the county of Ray; and whereas by an act of the legislature subsequently passed, and by virtue of a contract made thereunder, the Missouri River Valley Railroad Company of the one part, and the North Missouri Railroad Company of the other part, among other stipulations of said contract, the Missouri River Valley Railroad Company transferred and assigned to the North Missouri Railroad Company the said subscription of two hundred thousand dollars so voted and to be applied as aforesaid; and whereas, subsequently, by an agreement with the North Missouri Railroad Company, said company, among other things, agreed and contracted to run or build a stem of their said railroad from some point on the west branch of said road and running to Richmond; for the building of which stem, and in consideration of the same, one hundred and fifty thousand dollars of said subscription was to be appropriated and applied; and
74 whereas the North Missouri Railroad Company have submitted the following proposition, to wit:

"'OFFICE NORTH MISSOURI RAILROAD COMPANY,
"'*S't Louis, April 15th*, 1868.

"'At a general monthly meeting of the board held this day the following resolutions were adopted:

"'Resolved, That the president of the company, in conjunction with the executive committee, be, and they are hereby, fully authorized and empowered to make such contracts with the S't Louis and S't Joseph Railroad Company to aid in the building of said road as may be consistent with the interest of this company, and also to release the county of Ray from its subscription of $200,000 to aid in building the west branch of the North Missouri Railroad, upon the condition that this company is released from constructing a spur from the west branch to Richmond; and also upon the further condition that Ray County will subscribe $250,000 stock and secure the same to be paid towards the building of the S't Louis and S't Joseph Railroad.

(Signed) "'F. WESTON, *Secretary.*'

"Which is by the court duly considered, and which the court here declines to accept; but in order that said two hundred thousand dollars may be applied to the purpose and object of constructing a railroad from the west branch of the North Missouri Railroad, through the
75 city of Richmond, in said county of Ray, to S't Joseph, it is therefore ordered by the court that the said sum of two hundred thou-

sand dollars be, and the same is hereby, transferred to the S't Louis and S't Joseph Railroad Company, to be applied in building, constructing, and operating that portion of the S't Louis and S't Joseph Railroad in Ray County north of the west branch of said North Missouri Railroad, upon the following express conditions, to wit: That the North Missouri Railroad Company shall, in due form of law, and in compliance with this order, file a sufficient release in writing in the recorder's office of Ray County, releasing said county of Ray from the said subscription of two hundred thousand dollars, and all the stipulations and obligations of the contract heretofore entered into by and between said county of Ray and the said North Missouri Railroad Company for the building of the branch or spur of their said road to Richmond hereinbefore referred to. The court hereby agreeing, upon the filing thereof, to said cancellation of said contract aforesaid, and release of said subscription aforesaid, and that said S't Louis & S't Joseph Railroad Company shall build, construct, run, and operate the S't Louis and S't Joseph Railroad through the corporated limits of the city of Richmond, in said county of Ray afore-
76 said, and establish a depot within the corporate limits of the city of Richmond, in the county of Ray aforesaid; and that upon the filing of said release by the North Missouri Railroad Company as aforesaid, the presiding justice of this court shall subscribe the said sum of two hundred thousand dollars as stock in the S't Louis and S't Joseph Railroad Company, upon the conditions specified in this order. And it is hereby ordered by the court that the bonds of the county of Ray, representing the said two hundred thousand dollars' subscription as aforesaid, be issued to the said S't Louis and S't Joseph Railroad Company upon the following terms and conditions, to wit: That fifty thousand dollars of said bonds be issued when this court shall be satisfied that five miles of the road in Ray County, north of the west branch of the North Missouri Railroad and beginning at the said west branch of said N. M. R. R., is under contract, and for the building of which and construction of which the said bonds or their proceeds are to be applied; fifty thousand dollars additional of said bonds to be issued when this court shall be satisfied that ten miles of this road shall be graded and ready for the ties of said road in Ray County; and that an additional fifty thousand dollars of said bonds to be issued when this court is satisfied that an additional five miles of said road in Ray County next after the ten miles
77 aforesaid has been graded and ready for the ties, and the last fifty thousand dollars of said bonds to be issued when this court shall be satisfied that the remainder of said road, to the western boundary-line of said county of Ray, is graded and ready for the ties; and that all of said sum of two hundred thousand dollars be applied in building, constructing, and operating said road in Ray County north of said west branch of the North Missouri Railroad. And it is further ordered that said bonds shall be prepared by the S't Louis and S't Joseph Railroad Company in such denominations as they may desire. Said bonds shall be payable ten years after date, and bear interest at the rate of eight per cent. per annum from the date thereof. And it is further ordered by the court that, in addition to the foregoing terms and conditions, *that* upon the application of said railroad company for the issuing of the second fifty thousand dollars in bonds as aforesaid, the same shall not be issued until said county court shall be satisfied that the first fifty thousand has been applied as heretofore required, and upon every subsequent application of said railroad company for the issuing of
78 bonds, as hereinbefore set forth, the same shall not be issued until the court shall be satisfied that all bonds previously issued

have been applied as herein required in building, grading, and constructing said road as herein aforesaid,

* * * * * * *

and that, in consideration thereof, the president of the North Missouri Railroad Company execute the contract of said company, releasing the county of Ray from the obligation of its subscription to said company, being in the following words and figures, to wit:

79 *Contract of N. Mo. R. R. Co. releasing Ray Co. from its subscription, &c.*

"OFFICE NORTH MISSOURI RAILROAD COMPANY,
"*S't Louis*, 17*th June*, 1868.

[50-cent U. S. revenue-stamp affixed.]

"At a general meeting of the board of directors held this day the following resolution was passed:

"Resolved, That, in compliance with an order of the county court of Ray County, made on the nineteenth day of May, 1868, this company does release the county of Ray from its subscription of two hundred thousand dollars to the stock of this company, and from all the stipulations and obligations of the contract heretofore entered into between the county of Ray and this company for the building of the branch or spur of our road to Richmond, the consideration of this release being the cancellation of the existing contract between this company and the county of Ray, and the subscription by said county of Ray to the stock of the S't Louis & S't Joseph Railroad Company, and that the president is authorized to execute all instruments which may be proper to carry into effect this resolution.

"Know all men by these presents that I, Barton Bates, president of the North Missouri Railroad Company, in compliance with a resolution of the board of directors of said company, and for and in the name of said company, do hereby release the county of Ray from its subscrip-
80 tion of two hundred thousand dollars to the stock of this company, and from all the stipulations and obligations of the contract hereto ore existing between the county of Ray and this company for the building of the branch or spur of the road of this company's road to Richmond, the consideration of this release being the entire cancellation of the existing contracts between the county of Ray and the North Missouri Railroad Company, and also the subscription by the county of Ray to the capital stock of the S't Louis & S't Joseph Railroad Company.

"In witness whereof I have hereto set my hand and caused the seal of said company to be hereto affixed this eighteenth day of June, eighteen hundred and sixty-eight.

[L. S.] "BARTON BATES, *President.*

"Filed for record July 8th, 1868.

"A. J. BARR,
"*Clerk and Recorder.*

"STATE OF MISSOURI,
"*County of Ray, ss:*

"I, James T. Harris, recorder of deeds within and for the county and State aforesaid, certify that the above and foregoing is a true copy of the release from the North Missouri Railroad Company to the county of

Ray, in the State of Missouri, as the same appears upon record in book Z, at page 268, and following.

81 "In witness whereof I have hereunto set my hand and affixed my official seal at my office in Richmond, Mo., the 7th day of April, A. D. 1874.

[SEAL.] "JAMES T. HARRIS, *Recorder.*"

12. Before making said order last aforesaid by the county court, the citizens of the county presented to the county court, signed by between twelve and fourteen hundred names, citizens of the county, petitions in the following language:

"To the honorable county court of the county of Ray:

"We, the undersigned, citizens of Ray County, respectfully petition your honorable body to transfer to the S't Louis and S't Joseph Railroad Company the subscription heretofore voted to the Missouri Valley Railroad Company, the North Missouri Railroad Company consenting thereto; and, as in duty bound, will ever pray," &c.

13. The stock originally subscribed to the Missouri River Valley Railroad Company was voted in said company, and after the transfer was voted in the North Missouri Railroad Company, under orders of the county court of said county.

82 14. In pursuance of said subscription and orders of the county court, $200,000 in face-value of bonds, with coupons attached, were issued by the county court and delivered to the S't Louis and S't Joseph Railroad Company, and four certificates of stock were issued by the said railroad company in payment thereof, and delivered to the county court. Said certificates are numbered 129, 130, 131, & 132, each for 500 shares of stock of $100.00 each in said company, each certificate being dated 11th of January, A. D. 1870.

15. The county court levied and collected a tax to pay interest due on said bonds for the years 1869, 1870, 1871, 1872, & 1873, and the coupons were paid annually for the first four years above named, and the county still retains the amount of money collected for the year 1873, under an order of the county court. It is admitted that the certificates of stock are still held by the county court, and that they have never been tendered by the said court back to the company for cancellation.

83 16. The North Missouri Railroad Company constructed its western branch from Moberly to Kansas City, running through the county of Ray for a distance of between 26 and 28 miles.

The S't Louis and S't Joseph Railroad Company constructed its road from opposite Lexington, through Richmond, locating a depot in Richmond, and continuing to the northwest boundary of said county a distance of 28 miles; and that said railroad is completed, and is now being operated to the city of S't Joseph, Missouri. On the first named road there are four depots located in Ray County, and on the latter five depots.

17. The coupons now sued on are for interest due on the bonds issued to the S't Louis and S't Joseph Railroad Company.

The following is a copy of bond and coupon:

Copy of bond & coupon sued on.

"No. 288. $100.

"STATE OF MISSOURI.

"*Ray County bond.*

"Issued in payment of the stock of the S't Louis and S't Joseph Railroad Company.

"TEN YEARS.

"Know all men by these presents that the county of Ray, in the State of Missouri, acknowledges itself indebted and firmly bound to
84 the S't Louis and S't Joseph Railroad Company in the sum of one hundred dollars, which sum the county promises to pay to the S't Louis and S't Joseph Railroad Company, or bearer, at the American Exchange National Bank, in the city of New York, in the State of New York, on the first day of January, A. D. 1879, together with the interest thereon from the first day of January, A. D. 1869, at the rate of eight per cent. per annum, which interest shall be payable annually on the presentation and delivery at the said bank of the coupons of interest hereto attached. This bond being issued under and pursuant to an order of the county court of Ray County, made under the authority of the constitution of the State of Missouri and the laws of the general assembly of the State of Missouri, and authorized by a vote of the people of said county at a special election held for that purpose.

"In testimony whereof the said county of Ray has executed th s bond by the presiding justice of the county court of said county, under the order of said court, signing his name hereto, and by the clerk of said court, under order thereof, attesting the same, and affixing thereto the seal of said court. This done at the town of Richmond, County
85 of Ray aforesaid, this second day of November, 1869.

[L. S.] "C. W. NARRAMORE,

"*Presiding Justice of the County Court of Ray County, Missouri.*

"Attest:

"GEO. N. McGEE,

"*Clerk of the County Court of Ray County, Mo.*

"$8.00.] *Coupon.*

"RICHMOND, RAY COUNTY, MISSOURI,
"*November 2d, A. D.* 1869.

"The county of Ray acknowledges to owe the sum of eight dollars, payable to bearer on the first day of January, A. D. 1874, at the American Exchange National Bank in New York, for one year's interest on bond No. 288.

"GEO. N. McGEE,
"*Clerk of County Court of Ray County, Mo.*"

18. The money realized from the sale of the bonds so issued as aforesaid was expended in the construction of the S't Louis and S't Joseph Railroad, in the county of Ray; and in consequence of this arrangement

the county of Ray secured the construction and operation within its limits of about 24 miles of railroad more than would have been built under the previous contract or arrangement with the North Missouri Railroad Company.

86 19. The plaintiff is a citizen of the State of New York, is the legal holder of the bonds & coupons sued on for value, and without actual notice or knowledge of any defects or any irregularities in the issue of the bonds.

20. The county court of Ray County did not, in fact, at any time, make any proposition or order by which the question was submitted to a vote of the citizens of Ray County to subscribe to the capital stock of the S't Louis and S't Joseph Railroad Company.

21. There was no election held at which the citizens of Ray County authorized the county court to subscribe to the capital stock of the S't Louis and S't Joseph Railroad Company, and issue bonds in payment of the same in any sum whatever.

22. The charter of the S't Louis and S't Joseph Railroad Company contained no provision by which the county court was authorized to subscribe to the capital stock of said railroad company without a vote of the people.

23. The county court appointed an agent to cast the vote of Ray County at an election of directors held by said S't Louis and S't
87 Joseph Railroad Company; but said agent did not vote the stock at said election, and that the stock was not voted by any agent or by the county court at any election held by said railroad company.

24. The North Missouri Railroad Company was a corporation duly organized under an act entitled "An act to incorporate the North Missouri Railroad Company," &c., approved March 3d, 1851, and the several acts amendatory thereof, and continued as such corporation from 1851 up to 1872.

The following are provisions from said acts. (See agreement of counsel, page 93.)

88

89 25. The said bonds were not issued and delivered in sums proportioned to assessments made upon the stockholders of the railroad company, but were issued in installments as the work progressed, and as stipulated in the order of the county court authorizing the subscription or issue thereof.

26. The S't. Louis and S't Joseph Railroad Company was declared bankrupt by a judgment of the United States district court for the western district of Missouri, upon a petition of the creditors of said railroad company, in January, A. D. 1872.

Conclusions of law declared by the court.

Conclusions of law.

Upon the foregoing facts, the court finds, as a conclusion of law, that the plaintiff is entitled to recover on the coupons in suit, and that the forgoing facts do not constitute any defense to the said coupons in the hands of the plaintiff, and the court ordered final judgment accordingly for the plaintiff; to which finding and conclusion of law and judgment the defendant then and there duly excepted.

JOHN F. DILLON,
Circuit Judge.

90 And afterward, at said mentioned April term of said circuit court, the following further proceedings were had in this case, on the 3d day of May, 1875, to wit:

Writ of error allowed & citation signed.

HORATIO D. VANSYCKLE } No. 245.
vs.
RAY COUNTY.

Ordered that the writ of error this day presented to reverse the judgment hereinbefore rendered in favor of plaintiff be, and the same is hereby, allowed, and thereupon a citation admonishing said plaintiff to appear at and before the Supreme Court of the United States, on the second Monday of October next, is signed by the judge.

And afterward, during vacation of said court, and on the 10th day of May, 1875, the following proceedings were had in this case, to wit:

Bond for supersedeas approved & filed.

HORATIO D. VANSYCKLE } No. 245.
v.s
RAY COUNTY.

This day comes the said defendant, by its attorney, and files herein a supersedeas bond, which is approved by the honorable Arnold Krekel, one of the judges of this court, ordered to be filed and made a
91 part of the record herein; and it is further ordered that a supersedeas issue herein.

The above-mentioned bond being in words and figures as following, to wit:

Supersedeas bond.

Know all men by these presents that we, the county of Ray, in the State of Missouri, John Bales, William A. Donaldson, and W. R. Holman, of the county of Ray and State of Missouri, are held and firmly bound unto Horatio D. Vansyckle in the sum of ten thousand five hundred dollars, lawful money of the United States, to which payment well and truly to be made to the said Horatio D. Vansyckle, his certain attorney, executors, and administrators, *are* assigns, we do hereby bind ourselves, our successors, executors, and administrators, and every of them, jointly and severally, firmly, by these presents, sealed with our seals, and dated this first day of May, A. D. 1875.

Whereas the county of Ray, in the said State of Missouri, has sued out of the Supreme Court of the United States a writ of error to the circuit court of the United (States) for the eighth circuit and western district of Missouri, directed in a certain cause determined in said court, wherein the said Horatio D. Vansyckle is plaintiff, and the said county of Ray is defendant:

Now, the condition of this obligation is such, that if the above-
92 bounden county of Ray shall and do prosecute the said writ of error to effect, and shall and do answer all damages and costs if

the said county of Ray fail to make her plea good, then this obligation to be void; otherwise to be and remain in full force and virtue.

{ SEAL OF RAY COUNTY COURT, MO. }

CHARLES J. HUGHES,
Sole Judge of the Ray County Court.
JOHN BALES. [SEAL.]
WILLIAM A. DONALDSON. [SEAL.]
W. R. HOLMAN. [SEAL.]

Attest:
A. A. McCUISTION,
County Clerk.

I, J. L. Farris, do upon oath declare that I am well acquainted with the pecuniary condition of the parties who signed the above bond, and know that John Bales is worth at least three thousand dollars; that William A. Donaldson is worth at least five thousand dollars; that William R. Holman is worth at least five thousand dollars; that each of the parties named are worth the amount specified after meeting all their liabilities, and *and* aside from the exemption the law entitles them to, and that their property mainly consists of real estate.

J. L. FARRIS.

Subscribed & sworn to this 10th day of May, 1875.
A. KREKEL, *Judge.*

93 And afterward, during vacation of said court, and on the 27th of July, 1875, the following agreement of counsel was filed, to wit:

Agreement of counsel as to certain acts of the Mo. legislature.

VANSYCKLE, PL'T'F,
vs.
RAY COUNTY, DEFENDANT.

In the circuit court of the United States for western district of Missouri.

In this case it is agreed between plaintiff and defendant that on the trial of the appeal in the Supreme Court of the United States either party may read any provision or sections of the acts of the general assembly of the State of Missouri under which the North Missouri Railroad Company and the S't Louis & S't Joseph Railroad Company were organized, and all acts amendatory thereof, together with the acts of said general assembly under which were organized the Missouri River Valley Railroad Company, the Chariton & Randolph Railroad Company, the Western Branch of the North Missouri Railroad Company, and any other acts touching the powers, privileges, and franchises of either one or all of said railroad companies.

And the portions of said acts so used shall be considered as
94 constituting a part of the finding of the circuit court aforesaid, and as composing a part of the facts of said cause contained in said finding.

May , 1875.

J. B. HENDERSON,
For Plaintiff.
W. S. EVERETT,
For Defendant.

95 UNITED STATES OF AMERICA,
Western District of Missouri, ss:

I, Henry C. Geisberg, clerk of the circuit court of the United States for the western district of Missouri, do hereby certify that the writing hereto annexed is a true transcript of the record and proceedings in case No. 245, of Horatio D. Vansyckel against the county of Ray, in the State of Missouri, as fully as the same remain on file and of record in said case in this office.

I further certify that the addition inserted at the page numbered 54 was made before the signing of this certificate.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of Jefferson, in said district, this 30th day of July, A. D. 1875.

[SEAL.] H. C. GEISBERG, *Clerk.*

96 Supreme Court of the United States.

HORATIO D. VANSYCKLE, PL'FF,
against
RAY COUNTY, DEF'T. } In error. Of October term, 1875.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Ray County, by William S. Everett, its attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid given was given for the said Horatio D. Vansyckle against the said Ray County; whereas by the law of the land the said judgment ought to have been given for the said Ray County against the said Horatio D. Vansyckle. That said judgment so rendered as aforesaid was against both law and evidence, and against the law under the evidence; and the said Ray County prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that it may be restored to all things which it hath lost by occasion of the said judgment.

WILLIAM S. EVERETT,
Attorney for Plaintiff in Error.

(Indorsed:) Horatio D. Vansyckle against Ray County. Assignment of error. William S. Everett, attorney for pl'ff in error.

(Indorsement on cover:) No. 216. The County of Ray, plaintiff in error, vs. Horatio D. Vansycle. W. Missouri, C. C. U. S. Filed 15 October, 1875.

REC. 216—4

IN THE

SUPREME COURT

OF THE

UNITED STATES,

FOR THE

APRIL TERM, 1878.

RAY COUNTY, *Appellant*,

VERSUS

HORATIO D. VANSYCKLE, *Respondent*.

Philips & Vest and John E. Henderson,

COUNSEL FOR RESPONDENT.

SEDALIA DEMOCRAT PRINT.

IN THE
SUPREME COURT
OF THE
UNITED STATES.

RAY COUNTY, *Appellant*,

VERSUS

HORATIO D. VANSYCKLE, *Defendant in Error*

STATEMENT OF CASE.

On December 5th, 1859, the General Assembly of Missouri passed an act to incorporate the Missouri River Valley Railroad company, giving it authority to construct a railroad from any point on the North Missouri Railroad, in Randolph county, *via* Brunswick, Chariton county, thence through Carroll, Ray and Clay counties to any point on the Missouri river in Platte county. The 21st section of this act declares that all the provisions of the general railroad law not inconsistent with this act shall be extended and apply to said company.

The general railroad law existing at that time contained provisions as follows:

"SEC. 30. It shall be lawful for the county court of any county, and the city council of any city, to subscribe to the capital stock of any railroad company duly organized under this or any other act in this State, and the county court or city council subscribing or proposing to subscribe, to such capital stock, may, for information, cause an election to be held, to ascertain the sense of the taxpayers of such county or such city as to such subscription, and as to whether the same shall be paid by issues of county or city bonds, as the case may be, or by taxation."

"SEC. 31. Upon the making of such subscription by any county court or city, as provided for in the previous section, such county or city shall thereupon become, like other subscribers to such stock, entitled to the privileges granted, and subject to the liabilities imposed by this act, or by the charter of the company in which such subscription shall be made. And, in order to raise funds to pay the installments which may be called for, from time to time, by the board of directors of such railroad, it shall be the duty of the county court or city council making such subscription to issue their bonds, or levy a special tax upon all property and taxables made taxable by law for State and county purposes," etc., etc., etc.

On March 30, 1860, an act was approved to amend the aforesaid act, the third section of which is as follows:

"The county courts respectively of the counties of Randolph, Chariton, Carroll, Ray, Clay and Platte are hereby authorized and empowered to issue bonds of their respective counties upon the following terms and conditions: When either of the above named counties shall have subscribed to the capital stock of the Missouri River Valley Railroad company, or when either of the said counties shall become the owner by the purchase of stock in the capital stock of said company, then the county court of said county so subscribing or purchasing stock as aforesaid, is hereby authorized and empowered to issue and deliver in payment of said subscription or purchase the bonds of the county, in the sum of not exceeding one thousand dollars each bond, having not exceeding ten years to run to maturity, bearing interest at the rate of eight p r cent. per annum, payable annually at the county seat of said county, or in the city of St. Louis, as the county court may prefer."

Under the provisions of this act, and the general railroad law, the county court, on the 2d day of July, 1860, ordered that an election be held on the 13th of August following, submitting to a vote of the people whether the county of Ray should take two hundred thousand dollars of stock in said company. The election was accordingly held and 1337 votes were cast in favor of the subscription, and 623 votes against it. The poll books of said election were examined on the 8th day of November, 1860, by the county court, and the result declared and entered of record; whereupon three commissioners were appointed to subscribe said stock upon the books of the company, which was accordingly done. Afterwards, on the 10th day of February, 1874, an act was passed by the General Assembly of Missouri, entitled, "An act for the extension and completion of the Pacific railroad to the

western boundary of the State, at Kansas City, and the North Missouri railroad to the Iowa State line," etc.

The 12th section of said act is as follows:

"The Chariton and Randolph Railroad company and the Missouri Valley Railroad company may, by a vote of a majority of their stockholders in interest, transfer and assign to the North Missouri Railroad company all their effects and assets, rights and privileges under their respective charters, and all the work that has been done in the construction of the said roads; and upon such transfer being accepted by the North Missouri Railroad company, the said Chariton and Randolph Railroad company and the Missouri Valley Railroad company shall cease to have a corporate existence, and shall be styled and known as the West branch of the North Missouri Railroad; the said West branch to commence at the town of Moberly, in the county of Randolph, on the North Missouri Railroad, and extend west along the route adopted by the Chariton and Randolph Railroad company, to the city of Brunswick; and thence on or near the present survey of the Missouri Valley Road to Richmond, in Ray county; and from thence by the most advantageous and practicable route to some point on the north side of the Missouri river, at or below St. Joseph. And all the franchises vested in said Chariton and Randolph Railroad company, and in the Missouri Valley Railroad company, shall become by such transfer and acceptance as aforesaid fully and completely vested in the North Missouri Railroad company; *provided, however*, that if the transfer and acceptance aforesaid is not made by and between the said Chariton and Randolph company, the Missouri Valley Railroad company and the North Missouri Railroad company, and a connection thereby formed, as is contemplated may be done by this act, then, and in that event, the Missouri Valley Railroad company shall have full power to issue the same amount in bonds herein provided to be issued by the North Missouri Railroad company, for the benefit of the said West branch of the North Missouri Railroad as aforesaid. Said bonds when issued by the Missouri Valley Railroad company, to be issued in like manner, with like effect, and with the same lien on the Missouri Valley Road, in all respects, and to all intents and purposes, as if the same had been issued by the North Missouri Railroad company for the benefit of the said West branch; *and provided further*, that no connection formed by and between the Chariton and Randolph Railroad company, the Missouri Valley Railroad company and the North Missouri Railroad company, shall operate or have the effect to create any lien upon the said West branch aforesaid, for any liabilities of the said North Missouri Railroad, or for any State bonds issued for the benefit of said road prior to the transfer, acceptance, and connection provided for as herein aforesaid, shall have been made; *and provided further*, that the said West branch shall not be liable for any of the indebtedness or liabilities of the main line of the North Missouri Railroad; that the accounts and business of the said North Missouri main line and the said West branch shall be kept separate and distinct from each other, so that one road

shall not become or be held liable for the liabilities and indebtedness of the other."

The stockholders of the North Missouri Railroad company accepted the provisions of this act, and filed their acceptance, as required, in the office of the Secretary of State.

On the 4th day of April, 1864, the county court of Ray county appointed agents to vote its stock for directors of the Missouri River Valley Railroad company, and at the same time ordered and directed said agents to vote in the meeting of stockholders of the said Missouri River Valley Railroad company in favor of transferring and assigning all the effects and assets, rights and privileges of the said company to the North Missouri Railroad company, according to the provisions of the act of February 10, 1864.

On July 16, 1864, the agents so appointed reported to the court that they had cast the vote of Ray county as above directed, and their report was approved by the court, and ordered to be filed and recorded.

On February 16, 1865, the legislature passed "An act for the completion of the North Missouri Railroad and its West branch, and for the construction of a bridge over the Missouri river," which was duly accepted by the stockholders of the North Missouri Railroad company. The following is a section of said act:

"SEC. 14. The North Missouri Railroad company shall locate its West branch road from Richmond, in Ray county, through Clay county, and thence through Platte county, to Weston, on the most practicable route; *provided*, that the said Clay and Platte counties shall each subscribe two hundred thousand dollars toward the construction of said West branch road; and if the said company do not find it practicable to locate their road so as to touch the Missouri river opposite to the City of Kansas, then it shall be competent for said company at any time to construct a branch of the road from any point in Clay county to said City of Kansas, and may contract with the Kansas City, Galveston and Lake Superior Railroad company for so much of its road as may be desired for their main line or branch aforesaid."

The counties of Clay and Platte failing to subscribe, the North Missouri company located its West branch on a direct line from Moberly, in Randolph county, along the valley of the Missouri river to Kansas City. The city of Richmond, in Ray county, is situated on the uplands, several miles removed from the valley of the Missouri river,

which would cause a curve in the line of the North Missouri Road, adding to the length of the road and greatly increasing the grade. To avoid these difficulties the railroad company agreed with the county court to remit fifty thousand dollars of the subscription, and instead of running the main line through the city of Richmond, to build and and operate a spur from a convenient point on the main line of said west branch.

The North Missouri Railroad company, by the 9th section of the act of January 7, 1853, was authorized "to construct lateral or branch roads to any points."

See session acts 1853, p. 326.

The contract between the company and the county is dated on December 13, 1866, and is set out in full on pages 19, 20 and 21 of the printed record.

On the 19th day of December, A. D. 1866, the county court appointed an agent to vote its stock in the North Missouri Railroad company.

On the 13th of January, A. D. 1868, the St. Louis and St. Joseph Railroad company was organized under the general railroad law of the State, with authority to construct and operate a road from a point on the West branch of the North Missouri Railroad, at Richmond, in Ray county; thence on the most practicable route in a northwesterly direction through Plattsburg to the city of St. Joseph, in Buchanan county. Thereafter at the May term of said court, 1868, and on the 19th day of said month, the following order was adopted and entered of record:

WHEREAS, By a vote of the people of Ray county, in the year 1860, two hundred thousand dollars was voted to be subscribed to the Missouri Valley Railroad, and to be applied and expended in the building and construction of said road within the county of Ray;

And whereas, By an act of the legislature subsequently passed, and by virtue of a contract made thereunder, the Missouri River Valley Railroad company of the one part, and the North Missouri Railroad company of the other part, among other stipulations of said contract, the Missouri River Valley Railroad company transferred and assigned to the North Missouri Railroad company the said subscription of two hundred thousand dollars so voted and to be applied as aforesaid;

And whereas, Subsequently, by an agreement with the North Missouri Railroad company, said company, among other things, agreed and contracted to run or build a stem of their said railroad from some point on the West branch of said road and running to Richmond, for the building of which stem, and in consideration of the same, one hundred and fifty thousand dollars of said subscription was to be appropriated and applied; and

And whereas, The North Missouri Railroad company have submitted the following proposition, to-wit:

"OFFICE NORTH MISSOURI RAILROAD COMPANY,
ST. LOUIS, April 15th, 1868.

"At a general monthly meeting of the board, held this day, the following resolutions were adopted:

"*Resolved*, That the president of the company, in conjunction with the executive committee, be, and they are hereby fully authorized and empowered to make such contracts with the Saint Louis and Saint Joseph Railroad company to aid in the building of said road, as may be consistent with the interests of this company, and also to release the county of Ray from its subscription of $200,000 to aid in building the West branch of the North Missouri Railroad, upon the condition that this company is released from constructing a spur from the West branch to Richmond; and also upon the further condition that Ray county will subscribe $250,000 stock, and secure the same to be paid towards the building of the Saint Louis and Saint Joseph Railroad.

(Signed,) F. WESTON, Secretary."

"Which is by the court duly considered, and which the court here declines to accept; but in order that said two hundred thousand dollars may be applied to the purpose and object of constructing a railroad from the West branch of the North Missouri Railroad, through the city of Richmond, in said county of Ray, to St Joseph, it is therefore ordered by the court that said sum of two hundred thousand dollars be, and the same is hereby transferred to the St. Louis and St. Joseph Railroad company, to be applied in building, constructing and operating that portion of the St. Louis and St. Joseph Railroad in Ray county north of the West branch of the said North Missouri Railroad, upon the following express conditions, to wit: That the North Missouri Railroad company shall, in due form of law, and in compliance with this order, file a sufficient release in writing, in the recorder's office of Ray county, releasing said county of Ray from the said subscription of two hundred thousand dollars, and all the stipulations and obligations of the contract heretofore entered into by and between said county of Ray and the said North Missouri Railroad company for the building of the branch or spur of their said road to Richmond heretofore referred to. The court hereby agreeing, upon the filing thereof, to said cancellation of said contract aforesaid, and release of said subscription aforesaid, and that said St. Louis and St. Joseph Railroad company shall build, construct, run and operate the St. Louis and St. Joseph Railroad through the corporate limits of the city of

Richmond, in said county of Ray aforesaid, and establish a depot within the corporate limits of the city of Richmond, in the county of Ray aforesaid; and that upon the filing of said release by the said North Missouri Railroad company as aforesaid, the presiding justice of this court shall subscribe the said sum of two hundred thousand dollars as stock in the St. Louis and St. Joseph Railroad company, upon the conditions specified in this order. And it is hereby ordered by the court that the bonds of the county of Ray, representing the said two hundred thousand dollars subscription as aforesaid, be issued to the said St. Louis and St. Joseph Railroad company upon the following terms and conditions, to wit: That fifty thousand dollars of said bonds be issued when this court shall be satisfied that five miles of the road in Ray county, north of the West branch of the North Missouri Railroad, and beginning at the West branch of the said N. M. R. R., is under contract, and for the building of which, and construction of which, the said bonds, or their proceeds, are to be applied; fifty thousand dollars additional of said bonds to be issued when the court shall be satisfied that ten miles of this road shall be graded and ready for the ties of said road in Ray county; and that an additional fifty thousand dollars of said bonds to be issued when this court is satisfied that an additional five miles of said road, in Ray county, next after the ten miles aforesaid, has been graded and ready for the ties; and the last fifty thousand dollars of said bonds to be issued when this court shall be satisfied that the remainder of said road to the western boundary line of said county of Ray is graded and ready for the ties; and that all of said sum of two hundred thousand dollars be applied in building, constructing and operating said road in Ray county, north of said West branch of the North Missouri Railroad. And it is further ordered, that said bonds shall be prepared by the St. Louis and St. Joseph Railroad company in such denominations as they may desire. Said bonds shall be payable ten years after date, and bear interest at the rate of eight per cent. per annum from the date thereof. And it is further ordered by the court that in addition to the foregoing terms and conditions, that, upon the application of said railroad company for the issuing of the second fifty thousand dollars in bonds as aforesaid, the same shall not be issued until said county court shall be satisfied that the first fifty thousand has been applied as heretofore required; and upon every subsequent application of said railroad company for the issuing of bonds as hereinbefore set forth, the same shall not be issued until the court shall be satisfied that all bonds previously issued have been applied as herein required, in building, grading and constructing said road as herein aforesaid."

* * * * * * * *

"And that in consideration thereof, the president of the North Missouri Railroad company execute the contract of said company, releasing the county of Ray from the obligation of its subscription to said company, being in the following words and figures, to wit:"

CONTRACT OF NORTH MISS URI RAILROAD COMPANY RELEASING RAY COUNTY FROM ITS SUBSCRIPTION, ETC., ETC.

(50 cent U. S. revenue stamp affixed.)

"OFFICE N. M. R. R. COMPANY,
ST LOUIS, 17th June, 1868.

"At a general meeting of the board of directors, held this day, the following resolution was passed:

"*Resolved*, That, in compliance with an order of the county court of Ray county, made on the nineteenth day of May, 1868, this company does release the county of Ray from its subscription of two hundred thousand dollars to the stock of this company, and from all the stipulations and obligations of the contract heretofore entered into between the county of Ray and this company, for the building of the branch or spur of our road to Richmond, the consideration of the release being the cancellation of the existing contract between this company and the county of Ray, and the subscription by said county of Ray to the stock of the St. Louis and St. Joseph Railroad company, and that the president is authorized to execute all instruments which may be proper to carry into effect this resolution."

"*Know all men by these presents*, That I, Barton Bates, president of the North Missouri Railroad company, in compliance with a resolution of the board of directors of said company, and for and in the name of said company, do hereby release the county of Ray from its subscription of two hundred thousand dollars to the stock of this company, and from all the stipulations and obligations of the contract heretofore existing between the county of Ray and this company, for the building of the branch or spur of the road, of this company's road, to Richmond, the consideration of this release being the entire cancellation of the existing contracts between the county of Ray and the North Missouri Railroad company, and also the subscription by the county of Ray to the capital stock of the St. Louis and St Joseph railroad company.

"*In witness whereof*, I have hereunto set my hand, and caused the seal of said company to be hereto affixed, this eighteenth day of June, eighteen hundred and sixty-eight.

[L. S.] BARTON BATES, President.

"A. J BARR, Clerk and Recorder.

"Filed for record July 8th, 1868"

STATE OF MISSOURI, } ss.
COUNTY OF RAY, }

I, James I. Harris, recorder of deeds within and for the county and State aforesaid, certify that the above and foregoing is a true copy of the release from the North Missouri Railroad company to the county of Ray, in the State of Missouri, as the same appears upon the record in book Z, at page 268, and following.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Richmond, Mo., the 7th day of April, A. D. 1874.

[SEAL.] JAMES I. HARRIS, Recorder.

On the 17th of June, A. D. 1868, the Board of Directors of the North Missouri Railroad company, passed a resolution authorizing its president to execute an instrument releasing the county of Ray from its subscription of two hundred thousand dollars to the stock of said company, in consideration of the rescision of existing contracts between the said county and the North Missouri Railroad company, and in consideration also that the county would transfer its subscription of two hundred thousand dollars to the capital stock of the St. Louis and St. Joseph Railroad company, and issue its bonds in said amount to said last named company.

The resolution of the Board of Directors, and the instrument executed by the president of the company, are in the language and terms of the aforesaid order of the county court. (See record, p. 31.)

Before the county court passed the order of May 19, 1868, petitions were presented to the court, signed by between twelve and four teen hundred names, in the following language: "To the honorable county court of the county of Ray: We, the undersigned citizens of Ray county, respectfully petition your honorable body to transfer to the St. Louis and St. Joseph Railroad company the subscription heretofore voted to the Missouri Valley Railroad company, the North Missouri Railroad company consenting thereto; and as in duty bound will ever pray," etc., etc. Thereupon the county court subscribed the two hundred thousand dollars to the St. Louis and St. Joseph Railroad company, and issued the bonds of the county to the amount of two hundred thousand dollars in installments of fifty thousand dollars each, and received therefor four certificates of stock, dated January 11, A. D. 1870, which certificates the county still retains. The orders of the court providing for the issue of said bonds will be found on pages 24, 25 and 26 of the printed record.

The form of the bond and coupon issued by the county court will be found on page 33 of the printed record. The bond contains the following recitals: "This bond, being issued under and pursuant to an order of the county court of Ray county, made under the authority of the constitution of the State of Missouri, and the laws of the General

Assembly of the State of Missouri, and authorized by a vote of the people of said county, at a special election held for that purpose." The county court levied and collected a tax to pay interest on said bonds for the years 1869, 1870, 1871, 1872 and 1873, and the coupons were actually paid for the first four years thereof, and the county still retains the tax collected for the year 1873. The stock certificates have never been tendered back to the company for cancellation.

The North Missouri Railroad company constructed and is operating its western branch from Moberly to Kansas City, running east and west through the county of Ray for a distance of 28 miles.

The St. Louis and St. Joseph Railroad company constructed and is operating its road from the West branch of the North Missouri, through Richmond, locating a depot in Richmond, to the city of St. Joseph, and passing through Ray county in a northwesterly direction for a distance of 29 miles. There are four depots located in Ray county, on the North Missouri road, and five depots on the St. Louis and St. Joseph road.

The money realized from the sale of the bonds was all expended in building the St. Louis and St. Joseph railroad in the county of Ray; and in consequence of the said arrangement made with the North Missouri Railroad company, the county secured the construction and operation within its limits of 24 miles of railroad more than would have been built under the previous contract and agreement with the North Missouri Railroad company.

On which state of facts, the circuit court, as a conclusion of law, held that the plaintiff was entitled to recover, and gave judgment accordingly.

After an ineffectual motion for a new trial, the defendant below brings the case here on appeal.

POINTS AND AUTHORITIES SUBMITTED ON BEHALF OF RESPONDENT.

I.

Did the county court of Ray county have authority, under any law, general or special, to issue this bond? It did. The St. Louis

and St Joseph Railroad company was organized into a corporation December the 31st, 1867, under the general railroad law of the State of Missouri.

Sec. 17, chap 63, General Stat Mo., 1865, Title, "Of Railroad Companies," provides:

"It shall be lawful for the county court of any county * * * * to take stock for such county * * * * or loan the credit thereof to any R. R. Co. duly organized under this or any other law of the State; *provided*, that two-thirds of the qualified voters of such county, at a regular or special election, to be held therein, shall assent to such subscription."

The ordering and entire superintendence of such elections are under the special jurisdiction and supervision of the justices of the county courts.

Title 2, Ch. 2, Gen. Stat. Mo., 1865.

These justices determine and announce the result of all such elections, and are the exclusive judges of the result thereof.

The bond in question recites that it was "issued under and pursuant to an order of the county court of Ray county, made under the authority of the constitution of the State of Missouri, and authorized by a vote of the people of said county, at a special election held for that purpose"

What is the authority of the constitution and the laws of the general assembly referred to? Evidently it is that expressed in Sec. 14, Art 11, of the constitution of 1865, and Sec. 17, pg. 338, of the Gen. Stat. above quoted, requiring, each of them, a two-thirds vote of the electors

The duly accredited agents of this county, constituted by the law of the State, the sole judges of the fact, certify upon the face of this bond that it was issued under and pursuant to their order and *under the authority* of the constitution and the laws of the general assembly of the State, and that it was *authorized* by a vote of the people of their county, at a special election held for that purpose. These statements in substance and effect are, that the requirements of both the constitution and the statute were complied with in the issue of this bond; for the act could not be under the authority of the constitution

and the law, without a compliance with the fundamental requirements of the provisions of each. And, as if to leave no doubt on the mind of any purchaser who should deal with the bond, it recites the further fact that it was *authorized* by a vote of the people, at a special election, held for that particular purpose. If it was not such a vote as was required by law, the county justices could not have truthfully said that it authorized them to make the bond.

II.

The authority to make the subscription in question is derived primarily from the legislative act, and not the vote of the people.

As early as 1863, the Supreme Court of Missouri, in Flagg vs. City of Palmyra, 33 Mo., 450, say:

"We hold the bondholders to a knowledge of all that is contained in the act of the general assembly, etc.; but (in the absence of actual notice) *do not hold* them bound to enquire *whether an election had been held* as to the making of a subscription of stock * * * * or as to the regularity of such an election, or the qualifications of the voters thereat."

And in 1873, Napton, Judge, in Smith vs. Clark county, 54 Mo., 76, after quoting with approval the case *supra*, says:

"It is said that the power to subscribe is derived from the people of the county or city, and if this be conceded, a fraudulent or unfair and illegal election is as fatal to the exercise of the power as a subscription without any election at all. But *the power is derived from the law*, without which the unanimous vote of every voter in the county or city could not confer it. The law gives the power, but restricts its exercise by requiring an election These municipal subdivisions are authorized to issue negotiable securities upon certain conditions, and one of the conditions is not complied with. All the conditions, restrictions and limitations are equally binding; the absence of one of the prerequisites is as fatal as another"

The learned Judge then proceeds, by an accumulation of irresistable authority, to show that the buyer of such paper is not bound to enquire whether the prerequisites have been complied with, but is authorized to assume that the officers have done their duty. as the bonds upon their face certify.

In Grand Chute vs. Wineger, 15 Wall., 356, the question as to the essentiality of an election came up in such a manner as to leave no possible ground of doubt as to the view of this court. It arose on a

demurrer to the plea alleging, "that no special election, such as the act prescribed, had been called or held previous to the issue of the bonds."

The act provided, "that no bonds shall be issued" unless the required vote was given. The demurrer was sustained by the circuit court and affirmed by the supreme court.

In Supervisors vs. Schenck, 5 Wall, 784, the court, in a unanimous opinion, say:

"Argument of the defendants proceeds upon the ground that if they can show that the order for the election emanated from the wrong source, the plaintiff, although an innocent holder for value, cannot recover; but it is clear, that in a case like the present, *where the power to issue the bonds was fully vested in the corporation*, the proposition can not be sustained"

In Lynde vs. the county, 16 Wall., 6, there was in fact no election held on "The question, whether money may be borrowed." Yet the court (pg. 13) in effect say, that if in fact no election had been held, the bonds containing recitals implying a conformity to the statute, are unimpeachable in the hands of a *bona fide* holder.

In Humboldt Towns. vs. Long, 2 Otto, 645, the court say:

"The election was a step in the process of execution of the power granted to issue bonds in payment of a municipal subscription to the stock of a railroad company. *it did not itself confer the power*"

The case of Commissioners vs Thayer, 4 Otto, 631, is in perfect accord with the foregoing authorities. The bond in that case contained no recital that an election had been held. So it was open to the defense that no election, which "was a step in the process of execution of the power granted to issue bonds," had ever been held. Therefore, when the Kansas court found the affirmative fact, that "a majority of the electors cast their vote *against the proposition* to issue bonds, the entire foundation of the proceedings is gone." For the condition precedent manifestly had not been performed, and there being no recital in the bond to the contrary, to constitute an estoppel, the negative vote completely restricted the right of the court to execute the legislative power, and interdicted, if it did not subvert, its "jurisdiction to proceed further in the matter."

III.

ESTOPPEL.

Even though the existence of an election could be held to be a jurisdictional fact, this would not prevent the operation of an estoppel, found both upon the face of the bond in question, and *en pais*. For the estoppel is a preclusion in law, which prevents a party from alleging or denying a fact in consequence of his previous act, allegation or denial of a contrary tenor.

Stephens' Pleading, 197.
Bonner vs. Wilkerson, 5 Barn. & Ald,. 682.
Baker vs. Dewey, 1st Barn. & Cres., 704.

It is a plea which neither admits nor denies the facts alleged, but denies the legal right of the pleader to allege them.

Gould's Pleading, ch. 2, Sec. 39.
Taunton, J., in Bowman vs. Taylor.

2 Ad. & E., 278, says:

"The law of estoppel is not so unjust or absurd as it has been too much the custom to represent. The principle is that when a man has entered into a solemn engagement by deed (and equally so by bond) under his hand and seal, as to certain facts, *he shall not be permitted to deny any matter which he has so asserted.*"

If there is any principle of law definitively and firmly settled by often repeated *dicta* of the judges, and cumulative adjudications of the Supreme Court of the United States, it is this: Where the occurrence of any act—such as the vote of the electors—is a condition precedent to the exercise of the power of subscription by a county court or municipal corporation, and certain officers thereof, entrusted with the duty of ordering such election and determining its result, certify in the bonds issued that such condition has been complied with, the bonds, in the hands of a *bona fide* purchaser, are not subject to the defence that such election was not in fact held.

Knox Co. vs. Aspinwall, 21 How., 544.
Moran vs. Miami Co., 2 Black, 732.
Mercer Co. vs. Hackett, 1 Wall., 83.
Supervisors vs. Schenck, 5 Wall., 784.
Meyer vs. Muscatine, 1 Wall., 384.
City of Lexington vs. Butler, 14 Wall., 283.

This is especially the case where the fact, upon the happening of which the court or officers are authorized to issue the bonds, is one peculiarly within the knowledge of the persons to whom the power to issue has been conditionally granted.

Morey vs. Towns'p of Oswego, 2 Otto, 639.
Ibid, 642, 643.
Humboldt Towns'p vs. Long et al.

In this latter case the bond merely recited that it was issued in pursuance, &c., of the act, and that was held sufficient and conclusive on the county.

This point was carefully and fully investigated and settled in Town of Coloma vs. Eaves, 2 Otto, 484. And we submit that the case at bar is equally as strong, if not stronger for the respondent, both in the recitals of the bonds and the extrinsic merits. There the empowering act, after requiring preliminary notices of the election, provided that:

"If it shall appear that a *majority of all the legal voters* * * * voting at such election, have voted for subscription."

This is in effect the requirement of the Missouri legislative and constitutional provision.

Viewed in their relation to the state of the law under which they were issued, the bonds in that case and the one at the bar, in the operative words of their recitals, are remarkably similar. Both recite that they were issued *under* the law. The language of the Ray county bond being, if anything, more explicit and comprehensive in that it says, *under* the *authority* of the constitution and the laws of the General Assembly of the State.

The case at bar is stronger too than that of Humboldt vs. Long, *supra*, for there the bond did not recite in terms that any election was held; while in the case here the bond declares that it was *authorized* by a vote of the people of the county at a special election held for that purpose.

What was the manifest object of these recitals but to convey to the public and purchasers the idea and belief, that the issue and circulation of these bonds had all the sanctions of the constitution and laws of the State, and the consent of the people of the county? For this

county, after these recitals, have accomplished their mission in obtaining the money of innocent purchasers, and securing to the county the fruit of their negotiation for a period of six years, to say that these recitals are false, or do not mean what they say, were a mockery of justice —an indefensible wrong.

"If upon a true construction of the legislative enactment conferring the authority (to wit: to issue municipal bonds upon certain conditions), the corporation or certain officers, or a given body or tribunal, are invested with power to decide whether the condition precedent has been complied with, then it may well be that their determination of a matter *en pais* which they are authorized to decide, will, in favor of the bondholder for value, bind the corporation."

Dillon on Mun. Cor. (2d Ed.), § 419.

"The bonds recited that they were issued by authority of the common council, and that three-fourths of the legal voters had petitioned for the same, required by the charter. In a suit subsequently brought by an innocent holder for value, to recover the amount of unpaid coupons for interest, it was held inadmissible for the defendants to show that three-fourths of the legal voters of the city had not signed the petition for the stock subscription."

Idem.

See also—Bissell vs. Jeffersonville, 24 How., 287.
Van Hostrop vs. Madison City, 1 Wall., 291.
Mercer County vs. Hacket, 1 Wall., 83.
Meyer vs. Muscatine, 1 Wall., 384.
Knox County vs Aspinwall, 21 How., 544.
Town of Venice vs. Murdock, 2 Otto, 494.

"Power to issue bonds to aid in the construction of a railroad is frequently conferred upon a municipality in a special manner, or subject to certain regulations, conditions or qualifications; but if it appears by their recitals that the bonds were issued in conformity with these regulations, and pursuant to those conditions and qualifications, proof that any or all these recitals were incorrect will not constitute a defense for the corporation in a suit on the bonds or coupons, if it appears that it was the sole province of the municipal officers who executed the bonds to decide whether or not there had been an antecedent compliance with the regulation, condition or qualification, which, it is alleged, was not fulfilled."

St. Joseph Township vs. Rogers, 16 Wall., 644
Dillon Mun. Cor, § 419.
Comm'rs. &c. vs. Nichols, 14, N. S. 260.

Society, &c., vs. New London, 29 Conn., 174.

Railroad Company vs. Evansville, 14 Ind , 395.

"There is nothing in the case of Marsh vs. Fulton County, 10 Wall., 676, at all inconsistent with the rule thus asserted. In that case there were *no* recitals in the bonds, and there was no decision that the conditions precedent to a subscription, or to the gift of authority to subscribe, had been performed."

Colloma vs. Eaves, 2 Otto, 484.

Even the dissenting opinion in the foregoing case admits the doctrine in its broad sense:

"If, when the law requires a vote of taxpayers, before bonds can be issued, the supervisor of a township, or the judge of probate of a county, or other officer or magistrate, is the officer designated to ascertain whether such vote has been given, and is also the proper officer to execute, and who does execute bonds; and if the bonds themselves contain a statement or recital that such vote has been given, then the *bona fide* purchaser of the bonds need go no further. He has a right to rely on the statement as a determination of the question. But a mere execution and issue of the bonds without such recital is not in my judgment conclusive."

Justice Bradley's opinion in Colloma vs. Eaves.

In Moran vs. Miami county, 2 Black, 722, the court say:

"We think and adjudge that the recitals in the bonds are conclusive (of compliance with the precedent conditions), constituting an estoppel *en pais* upon the defendant in this suit."

To the same effect see Marcy vs. Oswego township, 2 Otto, 637, and Humboldt vs. Long, *idem*, 642. In the latter case the court say:

"The board of county commissioners, who caused the bonds to be issued, were constituted the authority to determine whether the conditions of fact made by the statute precedent to the exercise of the authority granted to execute and issue the bonds had been performed, and their recital in the bonds issued by them is conclusive in a suit against the township brought by a *bona fide* holder."

In Humboldt township vs. Long, the court say:

"Whatever may be the right of the township as against those who issued the bonds, it cannot be set up against a *bona fide* holder of the bonds, that the amount issued was too large, in the face of the decision of the board and their recital that the bonds were issued pursuant to and in accordance with the act of 1870."

To the same effect, see county of Moultrie vs. Savings Bank, 2 Otto, 631, where the court say:

"After having assured a purchaser that the subscription was made in December, 1869, when they had power to make it, it would be tolerating a fraud to permit the county to set up, when called upon for payment, that it was not made until after July 2d, 1870, when their authority expired."

See also—Concord vs. Portsmouth Savings Bank, 2 Otto, 625.

Grand Chute vs. Winegar, 15 Wall., 355.

Lynde vs. Winnebago Co, 16 Wall., 6.

Railroad Co. vs. Otoe county, 16 Wall. 667.

Kennicut vs. Supervisors, 16 Wall., 464

Chambers Co vs. Clews, 21 Wall., 317

The course of decisions by the Supreme Court of Missouri up to the period when the bonds of Ray county were issued, uniformly sustained the validity of such bonds in the hands of innocent purchasers:

"When a county, acting under an authority it supposed to be valid, subscribed to the stock of a company in good faith, issued its coupon notes in payment of such subscription, and for a series of years voted the stock, and paid its coupons, and such notes passed into the hands of innocent and *bona fide* purchasers, it is *estopped* from asserting that such notes were illegally issued."

Hannibal & St Joe R R Co vs. Marion Co., 36 Mo., 294 (1865.)

"We hold the bondholders to a knowledge of all that is contained in the act of the general assembly, but (in the absence of actual notice) do not hold them bound to enquire whether an election had been held as to the making of the subscription of stock, or as to the regularity of such an election, or the qualifications of the voters thereat"

Flagg vs. Palmyra, 33 Mo., 440. (1863.)

Where there were defects in the election and subscription, but the county received the stock and voted it, the purchaser is warranted "in assuming that such election, if required by law, had been duly held, and that the condition to the subscription had either been complied with or waived."

Barrett vs. County Court, 44 Mo., 197. (1869)

"The purchaser has a right to trust to the decision of the proper authorities, made when the bonds were issued, as to the regularity of the proceedings" Otherwise "the injustice to one who has received them, trusting to the truth of the recitals, would be very great"

Neal vs. Saline County Court, 48 Mo., 390 (1871.)

The case of Steins vs. Franklin Co., 48 Mo, 187, was decided in

1871, and subsequent to the issue of the Ray county bonds; and so was th ecase of Carpenter vs the town of Lathrop, 51 Mo., 483, which was decided in the year 1873 .

The case of the St. Joe & Denver R. R. Co. vs. Buchanan county was not one in which the rights of an innocent purchaser of commercial paper were involved, and in the two former cases, it does not appear that the recitals in the bonds were such as to operate as an estoppel against the municipality issuing them.

In the case of Smith vs. Clark county, 54 Mo., 58, the earlier doctrine of the court was reaffirmed in an able and exhaustive opinion, in which the court say that where bonds have been issued, and it has been supposed by all parties that the law has been complied with, the bonds on their face showing a compliance, "strangers should not be required to look further."

IV.

ESTOPPEL EN PAIS

If ever there was a party that should be estopped its obligation to pay its bonds, it is Ray county. I on the face of this entire transaction, and its surro that the county most sorely needed and anxiously sou tended through it, and particularly its county seat, a rai populous, and progressive community they were am abreast of the neighbor counties in all the external e tional prosperity, and in the increased facilities for co course and productive development. As early as 1859 the Missouri River Valley railroad company was incorporated, designed to run through this county (Vide pg 16, printed record.)

The county, by this act, was authorized to subscribe to the capital stock of this company On the 13th day of August, 1860, the people of the county, at an election held for that purpose, voted a subscription to this company of two thousand shares of stock, of one hundred dollars ($100 00) each, in payment of which the county court was authorized to issue the bonds of the county. In 1864 the legislature passed an act, *inter alia*, for the extension and completion of the

North Missouri Railroad company to the Iowa State line, etc. The 12th section of this act, in the nature of an enabling act, authorized the Chariton and Randolph Railroad company, and the said Missouri Valley Railroad company, by a majority vote of their stockholders, to transfer to the North Missouri Railroad company all their assets, rights, privileges and the work done on these respective roads. After which the Missouri Valley Railroad company was to merge into the North Missouri Railroad company. This was accepted by the latter company, and in April, 1864, the Missouri Valley Railroad company made this transfer.

Ray county having subscribed the stock aforesaid, and being represented by its agent in the last named company as a stockholder.

On February 16th, 1865, the legislature passed another act for the completion of the North Missouri Railroad and its west branch. This was also accepted. The 14th section thereof provided for the location and building of the west branch through said county and the town of Richmond.

On the 13th of December, 1866, a contract was accordingly made between the N. Mo R. R Co and the county court of Ray county, by which the company, in consideration of $150,000 of the bonds aforesaid, was to build to the town of Richmond the said West branch, to be known as "a spur" of said West branch. All this was approved and ratified by the proper orders of the county court, which afterwards appointed its agents and was represented as such stockholder in the N Mo. R. R. Co

The St Louis & St Joseph R. R. Co. having been chartered in January, 1868 (vide pg. 27 printed record), the said county court on the 19th day of May, 1868, made another order (beginning on pg 29 of printed record), which recited, *inter alia* that the N. Mo. R. R Co. proposed to release the county from its subscription to it, on condition that the company should be released from the contract to build said spur, and that the county should subscribe two hundred and fifty thouand dollars ($250,000) to the St. L & St Joe R R Co. for building its road, not only over the same route, but through the entire county.

This the county court declined, but in lieu thereof, upon the petition of 1,200 or 1,400 citizens of the county, requesting that said two hundred thousand dollars ($200,000) "be applied to the purpose and object of constructing a railroad from the West branch of the N Mo R. R. through the city of Richmond, in said county, *to St. Joseph*," made its order accordingly. The said order provided for the payments of said subscription in installments of $50,000 upon the doing by the said St. L. & St. Joe R. R. Co. of a given amount of work. This contract was accepted and duly ratified by all the parties concerned.

The orders of the county court show that the terms of this contract were strictly complied with by the St. L. & St. Joe R. R. Co. And before the last $50,000 was delivered, the court, by an *addendum* to the contract, required the company to establish additional depots in said county. This the company complied with. As a result of all which the said county got between 26 and 28 miles of railroad built through its southern boundary by the N. Mo. R. R. Co., and twenty-eight (28) miles of road, built by the St. L. & St. Joe R. R. Co., passing through its center and its capital town, with numerous depots established at convenient points for the accommodation of its citizens; which said roads have ever since been in active operation and use in said county, and bearing their proportion of the burdens of county taxation. Nor is this all: The county court appointed an agent to represent it as a stockholder in said company, though the agent does not appear to have acted. But the county received the certificate of stock as a stockholder in the St. L. & St. Joe R. R. Co., for the two hundred thousand dollars ($200,000) subscribed, and has held the same for seven years, and has never offered even to surrender the same. Nor is this all: The county has levied and collected a tax for the years 1869, 1870, 1871, 1872 and 1873 to pay the interest on these bonds, and has actually paid the same.

During all this time the people of this county have stood by and seen this road built in their midst, out of the very money realized on the sale of the county's bonds; held the certificate of the company's stock; paid their taxes for five years to meet the interest; have used, enjoyed and exulted over their miles of railroad; and now when asked

to continue to pay this interest, they catch the contagion of the spirit of resistance to this class of debts, which recently broke out like an epidemic in the State, and discover that they never voted for a subscription to the St. L. & St. Joe R. R. Co., although they voted it to another company which offered them a less number of miles of railroad and fewer accommodations.

By every inspiration of justice, morality and public faith, this county is estopped from making such a defense.

"*Omnis ratihabitio retrotrahitur et mandato priori æqui-paratur.*"

Amy vs. Pendleton county, 13 Wall., 305.

Superintendent vs. Schenck, 5 Wall., 781, 782, 783.

PHILIPS & VEST AND J. B. HENDERSON,

For Respondent.